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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

11-CR-424 (NRB)

5 GULAY CIBIK, REFAEL BRODJIK,
6 a/k/a "Rafi," NATHAN SCHWARTZ,
7 HAROLD TISCHLER, a/k/a
"Hershy,"

8 Defendants.

Jury Trial

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9
10 New York, N.Y.
February 4, 2013
11 9:18 a.m.

12 Before:

13 HON. NAOMI REICE BUCHWALD,

14 District Judge

15 APPEARANCES

16 PREET BHARARA

17 United States Attorney for the
Southern District of New York

18 JANIS ECHENBERG

JAMES J. PASTORE, JR.

19 Assistant United States Attorneys

MICHAEL DINET, Paralegal Specialist

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21 Attorneys for Defendant Gulay Cibik

22 BY: XAVIER R. DONALDSON, ESQ.

LAWRENCE D. GERZOG, ESQ.

23 JEREMY L. GUTMAN, ESQ.

24 Attorneys for Defendant Refeal Brodjik

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APPEARANCES
(Continued)

BRILL LEGAL GROUP, P.C.

Attorneys for Defendant Nathan Schwartz

BY: PETER E. BRILL, ESQ.

PAUL GREENFIELD, ESQ.

Attorney for Defendant Harold Tischler

ALSO PRESENT: DEIDRE GORDON, Special Agent, Homeland Security
RYAN GIBBS, Special Agent, U.S. Dept. of Labor

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(Trial resumed)

(In open court; jury not present)

THE COURT: Is there something you wanted to put on the record before the jury comes out?

MS. ECHENBERG: Just briefly, your Honor, and I've spoken to Mr. Gerzog about this, and I think we've resolved it, but I just want to put on the record.

You may remember that we had a sidebar during Mr. Salamon's cross-examination where Mr. Gerzog was attempting to get Mr. Salamon to admit that he had heard Rafi Brodjik running around the office claiming to be a cook and that that was hilarious and bragging about it. We had a sidebar, and there was an allegation that Mr. Salamon was committing perjury by not -- that he couldn't have possibly heard that.

I've gone back through the transcript. There was no testimony by Mr. Salamon that he heard that, that he saw Rafi Brodjik running around claiming to be a cook, but I think there was just some confusion on Mr. Gerzog's part about what the testimony actually was on that issue. Mr. Gerzog has assured me he's not going to raise that in his closing and I think, like I said, we've resolved it, but I just wanted to put that on the record so it was clear that Mr. Salamon didn't say something on direct that couldn't possibly be true, and that those allegations of perjury were unfounded.

MR. GERZOG: Since we're on the record, I agree with

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1 my colleague that I am not going to mention that in my
2 summation so it's really academic, but I think the record
3 reflects Mr. Salamon's testimony on my cross-examination that
4 he did hear Mr. Brodjik say that. And it's academic, I'm not
5 going to refer to it in my summation, but I just didn't want
6 Ms. Echenberg's statement that it doesn't exist not -- to go
7 without comment by me.

8 THE COURT: Okay. Well, we have to deal with real
9 matters.

10 There's only one small thing that I wanted to raise,
11 and obviously I reread the charge over the weekend. Maybe not
12 obviously, but appropriately. And there is one change which I
13 made, and it is simply that at the beginning of the section on
14 visa fraud, in the conspiracy context, that there was a listing
15 of four elements. On the copy I was working on -- and I don't
16 know whether it was your copy, but it was a section entitled
17 Elements of Visa Fraud, and it says first, second, third,
18 fourth. I took out that list because that list was written in
19 the context of a substantive offense, not a conspiracy, and I
20 just eliminated it and left, you know, the longer description
21 that followed per element.

22 MR. DONALDSON: On page 33? Is that --

23 THE COURT: Well, the copy I was working from was the
24 2/1 draft.

25 MR. DONALDSON: Okay.

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1 THE COURT: And it was page 32 in the copy I was
2 working on.

3 MR. DONALDSON: Okay.

4 THE COURT: Okay? So it's just that first, second,
5 third, fourth is not there as a list anymore. The rest remains
6 the same, with I guess one addition, and that is that on
7 element 1, the language that was used in the false statement
8 element 1, which on my copy was on page 35 to 36, a sentence
9 that begins, "In this regard, the government need not prove
10 that the conspirators agreed to physically make or otherwise
11 personally prepare the statement, writing, or document. It is
12 sufficient if the conspirators agreed to cause the statement or
13 representation or letter or document to be made or used." I
14 inserted that language also in visa fraud element 1, at the end
15 of the first paragraph. Okay?

16 I mean, there were probably some other very, very
17 minor adjustments. I took out the reference to 5K1.1. It's
18 never been mentioned here. That's probably just about it.
19 Okay? So -- yes.

20 MR. PASTORE: There were also references to Rule 35.

21 THE COURT: Oh, yes, that whole paragraph.

22 MR. PASTORE: Okay.

23 THE COURT: So I think the jurors have all finally
24 arrived. I think we can bring them in.

25 MR. GUTMAN: Your Honor, but there's still something

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1 about the government, you know, will advise the court of the
2 cooperation.

3 THE COURT: Oh, yes. It's just -- I'll tell you
4 exactly. It eliminates the paragraph that begins, "In this
5 regard, you have heard counsel use the terms 5K1 and Rule 35,"
6 but everything else stays.

7 MR. GUTMAN: Okay. Thank you.

8 THE COURT: Yes.

9 (Jury present)

10 THE COURT: Good morning, everyone.

11 THE JURORS: Good morning.

12 THE COURT: All right. As I told you, we have three
13 orders of business this morning. First, we have summation by
14 Mr. Gerzog on behalf of Mr. Brodjik; then we have a rebuttal
15 summation from the government; and then charge from me.

16 So, Mr. Gerzog?

17 MR. GERZOG: Thank you, your Honor.

18 Good morning, ladies and gentlemen.

19 THE JURORS: Good morning.

20 MR. GERZOG: It is traditional for someone giving a
21 summation to say thank you to the jury for their hard work. I
22 don't do it. The reason I don't do it is not because
23 Mr. Brodjik and Mr. Gutman and I are not very grateful to you
24 for the long time you've put into this so-called two-week
25 trial, but it's because it has a sort of a valedictory sound to

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Summation - Mr. Gerzog

1 me. It sounds like: Okay, the case is over, thank you very
2 much, good-bye. The case is by no means over. The hardest
3 part of the case is just about to begin. You're going to have
4 to deliberate, determine whether the jury -- whether the
5 government has proved beyond a reasonable doubt the charges
6 against my client, Refeal Brodjik.

7 Now remember what I said at the beginning. These four
8 defendants on trial, good for them, god bless them, you know, I
9 wish them every good thing in their lives. All I care about at
10 this trial is Refeal Brodjik. So I hope you have been able to
11 sort through the evidence and keep in your minds what evidence
12 has come in against Refeal Brodjik. But if you have had some
13 trouble with it -- and I know I have -- I hope to be able to go
14 through it with you a little bit and to discuss it with you a
15 little bit and show you just how it is that the government
16 failed to meet its very significant burden.

17 I would submit to you, ladies and gentlemen, that
18 these have been the three most important weeks in Rafi
19 Brodjik's life.

20 Let me just get a bottle of water.

21 And I know you will take your responsibilities with
22 respect to him and with respect to that very seriously.

23 Let's talk about the evidence. The story in this case
24 starts somewhere in 1980 -- 1998 or 1999. And the dates in
25 this case are really rather fuzzy. No one remembers much about

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Summation - Mr. Gerzog

1 exactly what happened. Of course they remember the day they
2 got arrested, of course they remember the day the place got
3 raided, things like that, but otherwise, it's: Well, it was
4 around 2000, 1999, 2001. I don't really remember.

5 And what happened? Well, two things happened. First,
6 a man named David Grynsztajn is living in a homeless shelter in
7 the Bronx, and Mr. Grynsztajn has 14 children now, I don't know
8 how many he had then, but there were a lot. And they were
9 young children. And he was in a very difficult situation. He
10 had tried -- he was in his mid 40s by then, and he had tried
11 all his life to make a living to support his family, and he was
12 unable to do it, and they ended up in a shelter. And as he
13 said -- or as I asked him: That must have been embarrassing
14 for you. Certainly no father wants to tell his children: This
15 is the best I can do for you, a homeless shelter. I'm sorry.

16 And so he went to his friend, his friend from
17 childhood, Earl David, and he said to Mr. David, "Look, I'm in
18 deep trouble. Is there anything you can do for me?" And Earl
19 David said, "You can come to work at my law firm. You can work
20 in the copy room." And he did. And he was making \$20 or \$30 a
21 day, and it really just wasn't enough, as you might imagine.
22 Those of you who live alone probably can't live on \$20 a day.
23 Certainly if you had ten children, you couldn't live on \$20 a
24 day. There's just no question about that.

25 So as Mr. Grynsztajn was working there, he finally

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Summation - Mr. Gerzog

1 said to Mr. David, "Isn't there something else I can do to make
2 some more money?" And Mr. David said, "Well, you could do the
3 immigration work. You could do some immigration work." And
4 Mr. Grynsztajn testified that at the beginning he didn't know
5 what that really meant, and he didn't know it was fraudulent.
6 But soon, sooner rather than later, he came to discover it was
7 fraudulent, and he had no choice but to do it. And I'm not
8 saying the ends justify the means and I'm not saying that David
9 Grynsztajn did not tell you untruths. He did. But you have to
10 have at least a little bit of sympathy for a guy like David
11 Grynsztajn, who was doing what he had to do to survive. He was
12 doing what he had to do to keep his life and his family's life
13 afloat. And now he's in a similar situation. His house is in
14 foreclosure. If the bank finally takes his house away, he
15 might have to move back to that shelter in the Bronx. He's got
16 nothing. He's unemployed, no money. And I submit to you,
17 ladies and gentlemen, that he has to do what he has to do here
18 in the courtroom as well. He said that, you know, "I didn't
19 want to commit fraud. I'm not -- I'm not that kind of person
20 at heart, but I had to do what I had to do." And I'm not
21 saying even that he's a perjurer at heart. I'm not even saying
22 that he's someone who will get up and lie just for the fun of
23 lying. But he has to do what he has to do. He has to come in
24 here and he has to work with the government, convince the
25 government that he's helping them, and try to convince you of

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Summation - Mr. Gerzog

1 the guilt of the people he's testifying about.

2 Now also in 1999 another thing happened. A man named
3 Sam Salamon was asked to sign a couple of job certifications,
4 or job applications, and he was asked to swear that he had jobs
5 in the photocopier business that he was a 10 percent partner
6 in. And Sam Salamon's situation was quite a bit different than
7 David Grynsztajn's. Sam Salamon had a job, Sam Salamon had a
8 house, Sam Salamon had ownership in the business. And he
9 testified to you, "I had no idea that what I was doing was
10 fraudulent. I really genuinely needed technicians. And they
11 said they were going to pay me to sign and I signed, but I
12 really genuinely needed technicians. It wasn't fraud."

13 Well, first of all, why would Earl David pay Sam
14 Salamon money to sign those forms if what was really happening
15 was that Sam Salamon needed technicians and was going to Earl
16 David to get technicians? Earl David was providing a service
17 to Sam Salamon. When have you heard of someone providing a
18 service to someone else and paying them for the privilege of
19 providing that service to him? We've talked -- we talked a lot
20 in the openings about common sense. Use your common sense.
21 That doesn't happen.

22 But we know he was lying to you because when he was
23 interviewed by the case agent in the case, Deidre Gordon, he
24 said, "It was false and I knew it was false." And when I
25 confronted him with that, he said, "Oh, I was misquoted." And

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Summation - Mr. Gerzog

1 then I asked Agent Gordon, "Was he misquoted? Did you make a
2 mistake about that?" She said, "No. He said it was
3 fraudulent." So he lied to you about that.

4 And the next thing that happened, Grynstajn is busily
5 working away at the firm, and 2001 Salamon is -- has a -- Earl
6 David makes an order for a Xerox machine, photocopy machine,
7 and Salamon walks into his office and he sees the line of
8 people. The office is full of people. And his eyes light up
9 like Hanukkah candles. They get so bright, you can't believe
10 it. He says, "Holy cow. Earl David is making a fortune. I
11 want in on this." What right does he have to be in on Earl
12 David's business? Is he a lawyer? No. Is he an immigration
13 specialist? No. But he wants money. Didn't Sam Salamon reek
14 of the kind of person that wants money? And look, the guy's
15 got cancer, and I'm sorry for that. Nobody should get cancer,
16 not the worst person in the world, and let me just put that
17 out -- right out there. I'm sorry that he has cancer, I'm
18 sorry that he's sick. But that doesn't apologize for -- that
19 doesn't excuse for what he did in this courtroom.

20 Now he said to Earl David, "Well, I can get you other
21 sponsors." And Earl David said, "Sure. Fine. I need all the
22 sponsors I can get." And they started on that basis. He got
23 Earl David sponsors, he got paid by Earl David.

24 And then there came a time when he walked into the
25 firm and he saw some guy sitting at a conference table signing

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1 hundreds and hundreds of these applications, and Earl David
2 said to him, "I don't need you anymore. I have this big
3 company that's going to sponsor hundreds of people at a time."
4 And Sam Salamon thought to himself, "Uh-oh. I'm about to be
5 cut out of the gold mine. I'd better think of something else
6 that I can do." And he -- he wiggled and wormed and nudged
7 himself into a position at Earl David's office where, let's
8 face it, the truth is that after Earl David's off the scene,
9 he's the boss. There wasn't any doubt about that. He becomes
10 the boss after Earl David's off the scene.

11 Now so we've got two guys established at the Earl
12 David law firm -- David Grynsztajn and Sam Salamon.

13 Fast forward a little bit, and we've got a young
14 Israeli couple, and some of you may have heard the expression
15 greenhorn or FOB -- fresh off the boat -- young people who
16 aren't really used to American ways who are coming to America
17 to start a new life. And they were coming on visitors visas
18 and they overstayed their visitors visas, and there's no
19 denying that, and, you know, immigration is a very hot topic in
20 our country today, and there's a lot of people who are very
21 angry about people overstaying their tourist visas and there's
22 a lot of people who are very angry about immigration issues,
23 but this case is not about whether they overstayed their visa
24 or not.

25 And they're knocking around New York City. They're

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Summation - Mr. Gerzog

1 living in Borough Park in Brooklyn. And what do they have?

2 Well, Rachel Brodjik, the wife, has experience as a baker, and
3 she has a letter of reference from the baker that she worked
4 for --

5 MS. ECHENBERG: Objection.

6 THE COURT: Sustained. There's no evidence of that.

7 MR. GERZOG: It's Government's Exhibit 400.

8 MS. ECHENBERG: Is he talking about the letter that's
9 in the file?

10 MR. GERZOG: Government's Exhibit 400.

11 THE COURT: All right. Well, the government will
12 respond.

13 MR. GERZOG: She's got an experience letter, a
14 reference letter, Government's Exhibit 400. Now what the
15 government's going to say and why they objected is, they're
16 going to say: Oh, that's a phony. That was made up by the
17 firm. And I'm going to ask you, is there any credible evidence
18 of that? Is there any credible evidence that Rachel Brodjik's
19 letter from the bakery in Jerusalem is a phony?

20 Now what could they have done to show you the proof to
21 prove to you beyond a reasonable doubt that Rachel Brodjik's
22 letter was a phony? Well, there's a name and an address and a
23 phone number and a fax number and they could have had Agent
24 Gordon call the bakery and say, "Have you ever heard of Rachel
25 Brodjik?" They could have faxed them a letter. They could

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Summation - Mr. Gerzog

1 have written them a letter. Didn't do it. Or did it and got
2 the answer they didn't want to hear and didn't want to tell
3 you. I don't know which. But don't let them tell you that
4 because they put in front of you evidence of other phony
5 experience letters that Rachel Brodjik's experience letter was
6 phony, because there's no evidence of it. They have to prove
7 it beyond a reasonable doubt. They can't.

8 So Rachel Brodjik's got this experience letter, and
9 she hears through the grapevine that there's a law firm that --

10 And keep in mind, it's not my burden to prove things
11 to you. So I don't have to prove to you that that letter is
12 genuine. They have to prove to you that the letter is false.
13 Okay? Just keep that in mind throughout. And I'll talk about
14 that throughout the case. I'll talk about their burden of
15 proof and my burden of proof, which is zero. I don't have to
16 prove anything to you. They have to prove everything to you.

17 So the Brodjiks hear about this law firm, and they go
18 for a visit. And the law firm is known for getting people
19 green cards who have specialty professions. Now frankly, it
20 was news to me when I sat down in this courtroom that being a
21 carpenter or a plumber or a baker was a specialty profession
22 and that we don't -- that you can't get enough Americans to do
23 that kind of work and that people are entitled to green cards
24 for being carpenters and plumbers and bakers. But, hey, I
25 don't make the law. That's apparently what the law was, at

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1 least at that time.

2 And so they go to the law firm, and there is a -- they
3 are told that there is a bakery in Lakewood, New Jersey that is
4 hiring bakers. And I'm not here to tell you that what they
5 were told was true. I don't know whether it was true or not.
6 And they put in a lot of evidence about Mr. Flam and his
7 bakeries and his businesses and his house in Lakewood, New
8 Jersey. But they have not proven to you that the Brodjiks
9 knew -- if in fact Mr. Flam was a phony, if in fact the job
10 offer was a phony, the government has not put forth evidence
11 beyond a reasonable doubt that the Brodjiks, who are just
12 showing up at the law firm, know that it's a phony job offer.
13 It might be one. It's possible that it was a phony job offer.
14 But there's no proof beyond a reasonable doubt that the
15 Brodjiks knew it was.

16 So they substitute Mrs. Brodjik in for another person,
17 a person with an unpronounceable Polish name. I have it
18 written down. I'll read it to you, but you know where it is.
19 It's Government's Exhibit -- I think it's 401-1.

20 And they substitute her in, and we see the date on
21 that substitution, on the submission of that substitution. And
22 there's actually a couple of dates. There's an October 2002
23 date and a November 2002 date. And they submit it. And it's
24 approved. And it's approved in February 2005.

25 Now let's talk about a couple of things Sam Salamon

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Summation - Mr. Gerzog

1 said.

2 Sam Salamon said that it was Refeal Brodjik who was
3 coming in to get the green card. We know that's not true.
4 There's no application for Rafi Brodjik anywhere. All we have
5 is Sam Salamon's testimony on that, not corroborated by
6 anything.

7 And then we have something else that Sam Salamon told
8 you. He said that he heard or that Rafi Brodjik said to him,
9 "Oh, gee. Listen to Earl having a fight with his wife and
10 listen to his wife threatening to call the Feds and get rid of
11 my green card, and, oh, what a problem that is. Oh, what
12 troubles I have." He didn't get his green card until February
13 of 2005. Earl David was long gone from 110 Wall Street by
14 February of 2005. That could not have happened. Earl David
15 left 110 Wall Street when he was suspended from the practice of
16 law in 2004, and he went to 90 Washington Street. We know
17 that. So when Sam Salamon testified to you that Rafi Brodjik
18 overheard an argument and was worried about his green card, it
19 is false. All right?

20 Now David Grynsztajn testified that when Rafi Brodjik
21 arrived at the law firm, he met Earl David, and he described
22 Earl David as very charismatic and brilliant, or appeared to be
23 brilliant, and they found out -- he found out -- withdrawn.
24 Earl David is a believer in the so-called Torah codes. Now you
25 may not be a believer in that, I may not be a believer in that.

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1 Or you may be. I don't know. But there are people that
2 believe that god has given his people hidden messages in the
3 Jewish Bible, the Torah, and that if you can figure out the
4 hidden messages, you know, you will get blessings or things
5 that other people don't get, information, help. And we know
6 that Earl David was into this because he had a publishing
7 company, and his publishing company was called Mazel & Bracha,
8 and that publishing company published a book that he didn't
9 write called The Torah Codes and published a book that he did
10 write called The Code of the Heart, both about that subject.
11 And we found out that Rafi Brodjik is a what they call mystical
12 Jew, someone who believes in that sort of thing, mysticism,
13 Jewish mysticism. And they got on. They started chatting
14 about that and they got friendly. And I asked Mr. Grynsztajn,
15 "Is it fair to say that their relationship was something like
16 uncle and nephew?" And he said yes. Younger -- older man
17 taking the younger man under his wing. And Sam Salamon
18 described his job at that time as a personal assistant to Earl
19 David. Not having anything to do with immigration but someone
20 who worked with Earl David, a personal assistant, doing
21 personal things for Earl David related to the publishing.

22 Now they both later say, and Ms. Echenberg said in her
23 opening statement, that Mr. Brodjik worked on immigration
24 cases. Well, let me remind you of an e-mail, and unfortunately
25 I don't have the number written down here, but I think you all

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1 remember it. It's the e-mail that Refeal Brodjik had written,
2 and no disrespect to Mr. Brodjik, but it's gibberish, it's
3 barely intelligible, and that's because Mr. Brodjik can't write
4 in English, and Sam Salamon told you that and David Grynsztajn
5 told you that. Now we could put it up on the screen, and I
6 invite the government to do that during their rebuttal, but you
7 remember what it looked like. And you can have it. You can
8 ask for it. You can look at it. I submit to you, ladies and
9 gentlemen, that someone who writes English as Mr. Brodjik
10 writes English, it doesn't make any sense -- again, use your
11 common sense. This was a law firm that was trying to fool the
12 federal government, and they did so very successfully. Are
13 they going to use someone to write false applications that can
14 barely write English? Did the government proved to you beyond
15 a reasonable doubt that Rafi Brodjik wrote applications?

16 And then they mention these R-1s, these Jewish -- or
17 they're not only for Jews. They're special religious worker
18 visas. And they say, well, Rafi Brodjik worked on the R-1s.
19 Same -- same point. Why would you have Rafi Brodjik work on
20 R-1s if he can barely write English? These documents are in
21 English.

22 And let's go through some of these documents that were
23 shown to us on the first summation.

24 One of the documents that was shown to us on the first
25 summation is a notice of action. And it's Government's

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Summation - Mr. Gerzog

1 Exhibit 3041. And the government made a big deal of the fact
2 that it was found in Refeal Brodjik's house. Well, guess what?
3 It was found in Refeal Brodjik's house. What was it doing in
4 Refeal Brodjik's house? We know what it was doing in Refeal
5 Brodjik's house. When they closed the 90 Washington Street
6 office, when Mr. David went to Canada, they put the stuff which
7 was in the 90 Washington Street office in the storage facility,
8 and you have the storage records, which are incredibly out of
9 sorts and unkempt and hard to figure, but there's some things
10 you can figure out about them. One is that that storage
11 facility was opened in November/December of '05, and the other
12 thing is -- and that's when they moved from 90 Washington to
13 Canada. You heard that in '04, when he was suspended -- and
14 there are those letters. Do you remember those letters in the
15 files where they sent the applicants letters that said: You
16 have a G-28 in the name of Earl David and we're writing to you
17 to let you know that Earl David is being suspended from the
18 practice of law, so he can't represent you anymore. And those
19 letters are written in August and October of '04. So we know
20 from the government that that's when Earl David was suspended.
21 And they said -- everybody is in agreement that Earl David
22 moved from 90 -- from 110 Wall Street once he was suspended to
23 90 Washington, and that's when they got this guy Jed David
24 Philwin involved, because Mr. David didn't want to raise any
25 red flags that a suspended attorney was on premises. And we

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Summation - Mr. Gerzog

1 also know that they closed the storage facility in August of
2 '06 because it says so on the storage facility form. And we
3 also know that Mr. David -- Mr. Brodjik took the stuff out of
4 the storage facility and brought it home. And we know whose
5 stuff it is. How do we know whose stuff it is? Because Earl
6 David called the storage facility, and there's a note to that
7 effect, and that was something that was admitted into evidence
8 by the government in which Earl David told the storage
9 facility: Those things in storage were put there by an
10 employee of mine. They belong to me. And when you saw those
11 huge unkempt boxes that these things came out of, they said
12 David on them, for Earl David, 'cause they were Earl David's
13 boxes. And that's where this stuff came out of, Earl David's
14 boxes that Rafi was holding for him.

15 Now Rafi knew, in 2006, according to Mr. Grynsztajn,
16 that Mr. Grynsztajn had been to the government, and yet he held
17 onto those boxes till 2009, when they were found in his house
18 by Agent Gordon. Has the government proved to you beyond a
19 reasonable doubt that a rational person would hold onto boxes
20 for three years that incriminated him? For what reason? He
21 did it out of loyalty to Mr. David. The government has not
22 proven that he knew or thought or had -- or there was any
23 reason for him to believe that those boxes incriminated him.

24 Now let's look at what they showed you to suggest that
25 the things that came out of those boxes incriminate him.

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Summation - Mr. Gerzog

1 Well, first, there is a notice of action on an R-1 --
2 I think it's an R-1, I'm pretty sure it's an R-1, I'm not an
3 immigration lawyer -- visa. And I'm guessing that they want
4 you to believe that because there was an R-1 visa in a box
5 belonging to Earl David in Rafi Brodjik's house that Rafi
6 Brodjik must have had something to do with it. Well, there's
7 no evidence about that. No one testified about that. I have a
8 brother who lives in a single -- who's single who lives in a
9 studio apartment, small studio apartment, and I have a house in
10 the suburbs. 30 of his boxes are in my basement. I don't know
11 what's in those boxes, but they don't belong to me. They
12 belong to my brother. I'm holding them for him. Maybe some of
13 you have done the same thing.

14 When we look -- here, we can go through the pages and
15 page by page, you know, this document, but then you look on the
16 inside, right, of the first page, and it says, "Dear Earl,
17 Faxing this to you. Hope all is well. Thanks so much for
18 everything." (Reading Hebrew), which means good job. Rabbi --
19 Molechem or something. Malcolm. Rabbi Malcolm. Is that proof
20 beyond a reasonable doubt that Rafi Brodjik filled out any R-1
21 applications? I asked David Grynsztajn whether he could show
22 me a single R-1 application that Rafi Brodjik filled out. He
23 said he couldn't. Sam Salamon didn't show you a single R-1
24 application that Rafi Brodjik -- that the government proved
25 Rafi Brodjik filled out.

D241cib1

Summation - Mr. Gerzog

1 The next thing in that -- those boxes of Earl David's
2 is a deposit slip in the amount of \$2200 deposited into Earl
3 David's account, and correct me if I'm wrong, but I believe
4 Mr. Pastore actually said that Rafi Brodjik deposited it into
5 Earl David's account.

6 (Continued on next page)

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D140cib2

Summation - Gerzog

1 What proof has the government given you that Rafi Brodjik
2 deposited this money into Earl David's account.

3 Now, it's true that it's dated May of '06. And we
4 know Earl David was in Canada, so we know Earl David wasn't
5 depositing into this account. But what proof, much less proof
6 beyond a reasonable doubt, is there that Rafi Brodjik deposited
7 this into Earl David's account? Zero.

8 They could have proved it to you, if it was true.
9 They could have gotten what we know is called a writing
10 exemplar from Rafi Brodjik. And they could have tried to match
11 it to the -- the writing for Earl David. They could have, if
12 they wanted to prove it to you beyond a reasonable doubt, gone
13 to CitiBank and gotten the records for this account. We know
14 you can get records for bank accounts, because we have records
15 for bank accounts in evidence.

16 We do not have, in evidence, our deposit slips
17 supposedly -- what the government said they would prove to you
18 beyond a reasonable doubt is that Rafi Brodjik made deposits
19 nearly every day during the period of time he was making
20 deposits, supposedly making deposits for Earl David.

21 Yet, all we have is one deposit slip; hundreds and
22 hundreds of alleged deposits, one deposit slip. And so on and
23 so forth. Found in that box, those boxes, are checks for Y.M.
24 Pollack. And they have Josh and Earl and other things written
25 on them. Nothing to do with Mr. Brodjik.

D140cib2

Summation - Gerzog

1 Pieces of paper that say R1, and term, and -- a tax,
2 and numbers. What's that got to do with Mr. Brodjik. How does
3 that prove, beyond a reasonable doubt, anything about
4 Mr. Brodjik.

5 There is a letter from a -- some kind of Kosher
6 service discussing an application. Doesn't mention
7 Mr. Brodjik. How is this proof beyond a reasonable doubt that
8 Rafi Brodjik did anything.

9 There is paper similar to the kind that the law firm
10 used to defraud the government, blank pieces of paper in Earl
11 David's boxes. We don't know if it was by the way at the top
12 of the box -- where no one could see it, at the top of the box,
13 in the middle of the box. How does this prove beyond a
14 reasonable doubt, beyond a reasonable doubt that Rafi Brodjik
15 is guilty.

16 We see a bunch of envelopes. And the envelopes say
17 Earl, and some money, and Jed. And it says Jed David Philwin
18 on the return address typed in, on all of them. And it has
19 money listed.

20 And I believe, I don't know remember, but I believe
21 Mr. Pastore said Rafi Brodjik's envelopes. Says who? Where is
22 the evidence that these are Rafi Brodjik's envelopes?

23 Okay. Now, we know Rafi Brodjik can't write in
24 English. So maybe they're gonna say, well, he can write in
25 Hebrew. So that's what he was doing, he was writing in Hebrew.

D140cib2

Summation - Gerzog

1 And here is a letter in Earl David's box written in Hebrew.
2 What evidence is there linking this letter written in Hebrew to
3 Rafi Brodjik. Earl David spoke Hebrew too. Sam Salamon spoke
4 Hebrew too. How can the government prove to you, beyond a
5 reasonable doubt, that Rafi Brodjik had anything to do with
6 this letter written in Hebrew, or that they hired him to do
7 Hebrew things, or write in Hebrew.

8 And then there is a bunch of other stuff in the box.
9 Contour Framing, Castillo Gonzales, Hernando; you know, lots of
10 labor applications. Contour Framing again.

11 Now, this is kind of interesting, actually. When they
12 tell you that Rafi Brodjik, or that Rachel Brodjik's experience
13 letter was forged, okay, compare it to government's 1114-7,
14 which is what they showed you before. Which has that kind of
15 cheezy letterhead, you know that kind of generic letterhead and
16 which has sort of the generic job description, and see if it
17 conforms. Look at other experience letters. This is a job
18 offer letter, but look at other experience letters. Ask to see
19 them if you want to. And see if they are the same kind of
20 experience letters as government exhibit 400.

21 And, another thing. On the application for the work
22 at Lakewood Bakery, there is a description of the kind of work
23 that the person is going to be doing. And it says bake cakes,
24 cookies, cherry pies, seven layer cake; that kind of thing.
25 Rachel Brodjik's experience letter says she knows how the bake

D140cib2

Summation - Gerzog

1 Challah and how to make coated cakes. If the government could
2 prove to you beyond a reasonable doubt that it was a forgery,
3 wouldn't they have done a better job matching her so-called
4 skills to the so-called job description. If they were writing
5 both of them, why would they write them so differently.

6 So, we now have David Grynzstein at the law firm, Sam
7 Salamon at the law firm. And Sam Salamon testified that the
8 Brodjiks came in, and that Rafi Brodjik was supposed to be the
9 one getting the green card. And you know that is wrong. And
10 we know about the so-called argument. And we know that's
11 impossible.

12 And then they're gonna get up and say to you, well, we
13 know, we heard a lot about Flam. We heard a lot about Abraham
14 Flam and that he is a phony. And that tax returns are listed
15 as going to his home address, and other tax returns are listed
16 as going to 225 Second Street, which is the supposed address of
17 the bakery itself. And this shows that it's all phony. Well,
18 I don't have to prove to you that it isn't phony. And it might
19 be phony, I don't know.

20 What the government has to prove to you, beyond a
21 reasonable doubt, is that Rafi and Rachel Brodjik knew it was
22 phony when they filled out the application.

23 Keep in mind that the law did not say you are
24 obligated to take the job you are offered. And there's no
25 doubt that Rachel Brodjik never worked at the Lakewood Bakery.

D140cib2

Summation - Gerzog

1 Now, they may get up and tell you there is no such
2 thing as the Lakewood Bakery, it doesn't exist. Well, maybe
3 that's true, I don't know. But have they proved to you beyond
4 a reasonable doubt that Rafi and Rachel Brodjik knew that it
5 wasn't true? And when I asked Agent Gordon if she had to be
6 Lakewood, New Jersey, she told me very proudly she had been
7 there four times. And that she had been to Abe Flam's house on
8 four different occasions. Remember, I was voir diring her on
9 the picture. And I said, well, did it look like that when you
10 were out there and she said, well, I was out there four times,
11 so which one are you talking about.

12 Okay, did she testify that when she was in Lakewood
13 she went to 225 Second Street to see if there was a bakery
14 there? No, she did not testify to that. What does that mean
15 to you? Either an agent of 21 years forgot that it might be a
16 good idea to go look at 225 Second Street, or perhaps it means
17 that she went and she looked and she didn't like what she saw
18 as far as proving things to you.

19 THE COURT: No --

20 MS. ECHENBERG: Objection.

21 THE COURT: That is truly over the line.

22 You know, and I know, what the government's obligation
23 is to disclose to you evidence contrary to the position that
24 they are asserting.

25 MR. GERZOG: Your Honor, that would, in my view --

D140cib2

Summation - Gerzog

1 THE COURT: Let's not argue about it. Go on.

2 It's the second time you did this.

3 MR. GERZOG: Well, I don't believe I've done it --
4 most respectfully I respect you very highly, but I don't
5 believe I have done it again.

6 Now, the government says that its proved that Rafi
7 Brodjik was part of this conspiracy. And they said they proved
8 that to you because Rafi Brodjik started cases. I suggest to
9 you there is no proof that Rafi Brodjik started cases. And as
10 I have suggested to you -- and they said there is proof of that
11 because Rafi Brodjik collected money. And that David
12 Grynsztajn said he collected money. And that Sam Salamon said
13 he collected money. And that's how he is involved in the
14 conspiracy. And the proof of that is from the grandstanding
15 testimony on the Salamon testimony, and also from the e-mails.

16 Now, let's talk about collecting money. What the
17 government has to prove to you, not only is that -- the
18 government has to prove to you beyond a reasonable doubt, that
19 he collected the money, that he deposited the money or got the
20 money to Earl David in some way, and that he knew what the
21 money was.

22 Has the government proved to you beyond a reasonable
23 doubt that he knew what the money was? Has the government
24 proven to you beyond a reasonable doubt that he got the money
25 through Earl David. And Sam Salamon said, oh, Earl would have

D140cib2

Summation - Gerzog

1 pitched a terrible fit if he had not gotten the money. But we
2 know later on that Sam Salamon is accused of stealing a lot of
3 money from Earl David. I mean it's fraudulent money, but it's
4 still money that Earl David thinks is his. And Earl David
5 says, look, aren't we all Jews, can't we be peaceful? This is
6 no big deal.

7 This is Earl David's reaction. Sam Salamon said,
8 because probably Sam Salamon feels this way if he was getting,
9 not getting money he wanted, that he would raise holy heck, if
10 that's what was happening. That there is no evidence that that
11 money got to Earl David.

12 Now, again, there is a deposit slip here. He could
13 have gotten those bank records. The government has not proven
14 to you beyond a reasonable doubt that Rafi Brodjik did what
15 they said he did.

16 Now, a couple of other things. The government said
17 that it found a bunch of e-mails, or that it got a bunch of
18 e-mails from Rafi Brodjik's house. And they're in this folder.
19 And they're marked as government exhibit 3031-1 through
20 3031-10. And they say, oh, you can tell these are genuine or
21 original or something, because they're in color and because
22 they were found in Rafi Brodjik's house. Well, we know all
23 about finding stuff from Rafi Brodjik's house. And I submit to
24 you that the fact that they were in color means that whoever
25 printed them has a color printer, and not a black-and-white

D140cib2

Summation - Gerzog

1 printer, but they had a computer forensics expert who worked
2 for them on the stand. And they didn't show these exhibits to
3 the computer forensic expert and say: What is the significance
4 of the fact that they are in color, and we found -- these were
5 found in Rafi Brodjik's house, and they are in color, and look
6 at them and try to figure them out. And they have been
7 investigating this case for years, and years, and years, and
8 they didn't have him look at these exhibits? Because these
9 exhibits were seized in 2009. And never had them look at them?
10 And they never had their computer forensics expert look at the
11 exhibits and ask him what the significance really was. They
12 asked Agent Gordon what the significance here was. And she
13 said something, I forgot what. And she is a fine woman, and a
14 dedicated agent. But not a computer expert.

15 And they say this exhibit is the definitive proof that
16 Rafi Brodjik was collecting money and getting it to Earl David.
17 And he knew that it was fraudulent money, 3031-1. And it says:
18 Over the past year, you and your partner have directly and
19 indirectly swindled me, personally, not to mention Earl, out of
20 at least a \$1,000 to \$2,000 a week, you do the math. My
21 conservative estimate is at least 50 to \$75,000.

22 Well, now, we know Davi Grynzstein said that Rafi
23 Brodjik was supposed to get 20 percent of the money he
24 collected, but we know that's wrong. Sam Salamon said it was
25 10 percent. And there are a couple of references to 10 percent

D140cib2

Summation - Gerzog

1 in the e-mails.

2 So it isn't clear to me whether Rafi Brodjik is saying
3 that you cheated Sam Salamon out of 50 to \$75,000 a year, in
4 which case I, Rafi Brodjik, was entitled to 10 percent or 5 --
5 or 5,000 to 7,500, or whether you cheated me, Rafi Brodjik, out
6 of \$50,000, to \$75,000, which means he would have cheated Earl
7 David out of \$500,000 thousand to \$750,000 thousand in one
8 year.

9 And Sam Salamon got up on the stand and told you he
10 made \$250,000 a year? Which is a lot of money. If he made
11 \$250,000 a year, he is a snake. But who says he only made
12 \$250,000 a year? Only Sam Salamon. There is no books and
13 records to show that that is what Sam Salamon made. We have
14 Sam Salamon's word, only. And David Grynsztajn said, oh, well
15 one year, my best year, I made \$150,000. But, oh, is it less
16 than that. How has the government proven beyond a reasonable
17 doubt that either David Grynzstein or Sam Salamon were telling
18 the truth about that. All you have is their word. And we know
19 what their word is worth.

20 Now, the government then goes on to say that Rafi
21 Brodjik is guilty of filing false immigration documents. And
22 they do that in two ways. They say that when Rachel Brodjik
23 filed her immigration documents, he either knowingly -- in
24 other words, he either like wrote them, he was responsible for
25 them, or that he aided and abetted her in filing them. And I

D140cib2

Summation - Gerzog

1 believe the judge will instruct you on the law, that when you
2 aid and abet someone in order to break the law --

3 MS. ECHENBERG: Objection. I mean just to clarify,
4 are we talking about count four?

5 (Discussion off the record)

6 They claim that with respect to Rachel Brodjik's claim
7 for a green card, that Rafi Brodjik is either responsible for
8 it in total, which means like he wrote it, that they have
9 proved to you, beyond a reasonable doubt that he wrote it.
10 Which they haven't. How could they. Or that he helped her,
11 aided and abetted her, and I expect the judge will charge you
12 that aiding and abetting means when someone else is committing
13 a crime, that other person knows they are committing a crime
14 and you do something to help them to further their commission
15 of that crime.

16 So the government, in order to find Rafi Brodjik
17 guilty of that count, the government would have to prove to you
18 beyond a reasonable doubt, beyond a reasonable doubt, that
19 either Rafi Brodjik filled in that application and told
20 untruths in it, or that his wife was aware that the application
21 was untrue and that he helped her in some way accomplish her
22 crime of visa fraud of getting a green card fraudulently.

23 Now, what evidence beyond a reasonable doubt or
24 otherwise is there that Rachel Brodjik knew that this was
25 fraudulent, that she was filling out a fraudulent form. Is

D140cib2

Summation - Gerzog

1 there any evidence of that? And what evidence is there that
2 Rafi Brodjik knew it was fraudulent, and exposed his wife to
3 criminal exposure -- to doing something criminal without
4 letting her know. What evidence is there of that? The
5 government has not proved that to you beyond a reasonable
6 doubt.

7 And then, final count, is that Rafi Brodjik told lies
8 when he filled out his application for naturalization.

9 Well, before we get to that, I am going to get to
10 that. But before we get to that, let's just do a couple of
11 other quick things.

12 You recall that Agent Gordon said that she interviewed
13 Gulay Cibik at some point, and that Gulay Cibic told her
14 certain things about the law firm. Gulay Cibic allegedly at
15 least told her that Sam Salamon worked there, and David
16 Grynsztajn worked there, and Earl David worked there and --

17 MR. PASTORE: Judge --

18 THE COURT: I'm sorry. I was checking something else.
19 Hold on a second.

20 MR. PASTORE: In light of this argument, where it's
21 going, I'll just -- United States v. Bruton, that's all I'll
22 say.

23 MR. GERZOG: Can we have a sidebar on that, Judge?

24 MR. DONALDSON: I think that may be necessary.

25 MR. GERZOG: I assume, Mr. Pastore's point is that

D140cib2

Summation - Gerzog

1 Ms. Cibic mentioned Mr. Brodjik. And the reason that he didn't
2 have Agent Gordon say that is for Bruton purposes. But it's my
3 understanding that she didn't say it. And I think Mr.
4 Donaldson getting up and saying that it was necessary to have a
5 sidebar, I think it's his understanding, as well, that
6 Ms. Cibik did not, in that interview with Agent Gordon, mention
7 Rafi Brodjik.

8 THE COURT: What -- I'm sorry, I am lost.

9 MR. PASTORE: Mr. Gerzog actually correctly identifies
10 our concern that the government didn't elicit certain testimony
11 regarding what Ms. Cibik said about Mr. Brodjik. Certainly in
12 the proffer, certainly in the proffer --

13 MR. GERZOG: The proffer has nothing do with that. We
14 are talking about whether Agent Gordon went to her, didn't
15 arrest her, told her she wanted to ask some questions. And
16 said she wanted to ask some questions, said tell me about the
17 Earl David law firm. Ms. Cibik apparently told him -- her
18 about the Earl David law firm and the people who worked there.
19 And did not mention Rafi Brodjik.

20 MR. PASTORE: She mentioned Mr -- She does mention --
21 she mentioned Mr. Brodjik in the proffer, and to suggest
22 Brodjik --

23 MR. GUTMAN: Two different things.

24 MR. PASTORE: To suggest she didn't mention Rafi
25 Brodjik --

D140cib2

Summation - Gerzog

1 MR. GERZOG: I said she didn't mention him in the
2 interview.

3 THE COURT: I think it's --

4 MR. GERZOG: They don't even know about the proffers.

5 THE COURT: That's the whole point, is that the
6 defendant is highly protected. And then for you to argue that
7 because in the initial interview she didn't mention that when,
8 you know, that later on she did and the government is precluded
9 from using that, is to create the type of false impression that
10 just is not cricket.

11 MR. GERZOG: I don't think that is right.

12 Go ahead.

13 MR. GUTMAN: I mean a proffer agreement is a contract
14 between two parties. I don't think any possible theory that
15 her proffer statement becomes admissible against Mr. Brodjik --

16 THE COURT: When you guys want to push the line, as
17 you have done over and over again, raise it in advance, get
18 some law on your side, and don't try to do these things last
19 minute. I'm not going to just -- doesn't seem right to me.

20 MR. DONALDSON: And just for the record, regarding
21 Mrs. Cibik, I just really don't want any avenues to be opened
22 and made, in my opinion, start prejudicing her regarding these
23 proffers and these interviews. So I'm a little concerned about
24 where this might go, so.

25 THE COURT: I think we should go away from it also.

D140cib2

Summation - Gerzog

1 Totally confused about the last argument. I don't recall it
2 being the government's theory that Mr. Brodjik wrote
3 Mrs. Brodjik's application.

4 MR. GERZOG: Either guilty --

5 THE COURT: And that -- and that is, you know, I
6 mean --

7 MR. GERZOG: He's either guilty outright; in other
8 words, he did something -- he did something that makes him
9 guilty in his eyes, in his own right, of Rachel's application
10 being fraudulent, or he aided and abetted her.

11 MR. PASTORE: No, he --

12 THE COURT: That's not really the focus of the case.
13 It's like a straw man up there. He did it.

14 MR. PASTORE: That he aided and abetted Earl David and
15 David Grynztajn, but we think -- we didn't object. Your
16 Honor's instructions are clear to aiding and abetting.

17 THE COURT: Yeah, right. Okay.

18 MR. GERZOG: And I --

19 THE COURT: You stuck up a straw man, but got away
20 with it.

21 MR. GERZOG: What I'm saying, she would have to know,
22 Rachel --

23 MR. PASTORE: No.

24 THE COURT: You put up a straw man.

25 But stay away from the interview.

D140cib2

Summation - Gerzog

(Continued on next page)

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D140cib2

Summation - Gerzog

1 (In open court)

2 MR. GERZOG: The final count in the indictment against
3 Rafi Brodjik is that he lied to the government when he filled
4 out his application for naturalization.

5 And the lies he supposedly told, Mr. Pastore went over
6 them, the lies he supposedly told, were that when he was asked
7 have you ever committed a crime for which you have not been
8 arrested, he lied by not admitting to these crimes that he has
9 charged with now.

10 The other things that he supposedly lied about was
11 omitting working for Earl David. And the only relevant period
12 on the form, the form asks for the last five years. So the
13 only relevant period would have been that I guess he allegedly
14 worked for Earl David was January 6 -- January '06, I'm sorry,
15 to about June or July of '06. And that he lied when he said he
16 had never tried to defraud the government in an immigration
17 matter before. And I gather that means that the government is
18 gonna put forward that he tried to defraud the government with
19 respect to Rachel Brodjik's worker application.

20 Now, we have been through Rachel Brodjik's worker
21 application. We know the answer there. The questions become
22 did he lie when he said he had never committed a crime, and did
23 he lie when he didn't put working for Earl David.

24 Now, let's look at the evidence. The crime he
25 allegedly lied about is this crime, these crimes; that he

D140cib2

Summation - Gerzog

1 committed these crimes and had not told the government about
2 them.

3 Well, I think I've gone over in pretty good detail as
4 to how the government has not proven that he committed those
5 crimes.

6 So what we're left with is listing or not listing Earl
7 David on the form. And I believe the government's theory is
8 that he didn't list Earl David on the form because he didn't
9 want Earl to be associated with Earl David on an official
10 immigration form. Because the immigration people -- he is
11 filling out the form in the -- by this time, you know,
12 everybody has been arrested. He had not been arrested, by the
13 way, but a lot of people have been arrested. And, it was
14 mighty clear the government had certain attitude about the Earl
15 David law firm, and that he didn't want to be associated with
16 it.

17 Well, first of all, the government told you that in
18 2009 he had had his home searched in connection with the Earl
19 David case. So what. He thought Agent Gordon was not going to
20 mention to anybody that I did a search warrant on Rafi
21 Brodjik's home, and I suspect Rafi Brodjik of committing
22 crimes? All of these, the Department of Immigration has this A
23 number system. So it's not like, you know, you put into the
24 form, you put into the system I did a search warrant on John
25 Doe, and then you have got to rely on them to check every John

D140cib2

Summation - Gerzog

1 Doe there is --

2 MS. ECHENBERG: Objection.

3 THE COURT: Yes, sustained.

4 MR. GERZOG: They have an A number. And that's how
5 they track aliens. And Mr. Brodjik's home had been searched in
6 2009. So I don't believe the government has proved to you,
7 beyond a reasonable doubt or otherwise, that Rafi Brodjik had a
8 motive to lie in order to hide his association with Earl David.

9 Or, with the Bracha -- let me just -- by the way, let
10 me get this off my chest. Do you remember I asked David
11 Grynsztajn what does Barucha mean? David Grynsztajn went to
12 Yeshiva, the Jewish religious school, for at least we know from
13 13 to 17 here in the United States. We can guess he went to
14 Jewish religious school in Poland, because his parents said,
15 when he dropped out of Jewish Religious school, that they would
16 rather he be a high school drop-out than go to public school.
17 Maybe he did, maybe he didn't, I don't know. But if any of you
18 are Jewish, you know --

19 THE COURT: Mr. Gerzog --

20 MR. GERZOG: Yes, your Honor.

21 THE COURT: If any of you are Jewish.

22 MR. GERZOG: Okay. Whether or not any of you are
23 Jewish, Barucha is the beginning word of half, Hebrew prayers.
24 It is impossible. It's like saying someone who is Catholic
25 doesn't know what a Hail Mary means. And when he said to me,

D140cib2

Summation - Gerzog

1 well, I don't speak Hebrew. And I said, well, do you pray in
2 Hebrew? Well, I don't pray. Well, you know, maybe he has had
3 a falling out with the church, I don't know, I don't care. But
4 he knows what Barucha means, come on.

5 Now, I want to talk to you about the tax records
6 vis-a-vis what Rafi Brodjik wrote on the naturalization form
7 about Earl David.

8 The tax records are government's 402 through 409. And
9 if you will look at the tax records, you will see -- well, you
10 will see a couple of things. You will see, first of all, that
11 the real criminals, Sam Salamon and David Grynsztajn, didn't
12 file taxes. They were making a lot of money, illegally, and
13 they didn't file taxes. And I submit to you that's the normal
14 course of business.

15 Rafi Brodjik filed taxes during the period of time he
16 was supposedly working for Mazel and Barucha, or Earl David, or
17 whatever it is they testified he was doing. Okay. So
18 number 1, he filed taxes.

19 Number 2, they show that the Brodjiks didn't file
20 taxes for 2002 and 2003. Don't let the government get up and
21 tell you that they have proved beyond a reasonable doubt that
22 there is anything wrong with that. Because if you don't make a
23 certain amount of money, you don't have to file taxes.

24 THE COURT: Just a second, I thought we dealt with
25 this.

D140cib2

Summation - Gerzog

1 MR. GERZOG: I'm sorry, Judge, I --

2 THE COURT: We have an exact instruction that the only
3 false statements are those that the government argued. So
4 there is no need to throw up a straw man to knock it down.

5 MR. GERZOG: All right. I just didn't want any
6 trouble --

7 THE COURT: I have a charge on that, and we have
8 discussed it more than once.

9 MR. GERZOG: There is, in government exhibit -- in the
10 taxes for '04, '05, '06, '07, it says, on the second page of
11 Form 1040 that: Rafi Brodjik listed himself as unemployed.
12 But then he lists himself as having Schedule C income, self
13 employment income. So he was not unemployed. He just didn't
14 have a W-2. He didn't have that kind of employment. And in
15 2008 when he got a W-2 because he became a driver for someone
16 else, he listed himself as driver. Okay, now, I'm employed, I
17 got a W-2.

18 Well, we know being self-employed doesn't mean
19 unemployed. Rafi Brodjik is a greenhorn. Rafi Brodjik's first
20 language is not English. And we know he didn't get a W-2 from
21 Barucha Publishing. We know he didn't get a W-2 from Earl
22 David. And that's consistent with the way he filled out his
23 taxes. No W-2, no job.

24 Now, I believe those are the -- let me just -- I
25 believe those are the things that the government is arguing to

D140cib2

Summation - Gerzog

1 you are his false statements, that he didn't want to put --
2 that they have proven beyond a reasonable doubt that he didn't
3 put Earl David or Mazel Barucha or something like that on
4 purpose in order to hide his involvement. And that just
5 doesn't make any sense. They keep talking about common sense,
6 it just doesn't make any sense.

7 Now, ladies and gentlemen, as I stood up in the
8 beginning, I said it's a little counterintuitive in trial. I
9 said the defendant is presumed innocent. Mr. Brodjik, as he
10 sits there when we started on January 15th, he was presumed
11 innocent. He has been presumed innocent all along. He is
12 presumed innocent today. And he is presumed innocent when
13 Mr. Pastore closed against him. He will be presumed innocent
14 when, I think it's gonna be Ms. Echenberg who rebuts my
15 summation, or rebuts all of our summations. He is presumed
16 innocent. That means that the government has to prove beyond a
17 reasonable doubt, the highest standard of proof in the law --
18 and her Honor will define that for you -- before you can
19 convict. There is no shame in a verdict of not guilty.

20 This is not some kind of lawyer's trick. This is not
21 some kind of loophole. This is not some kind of, whew, I just
22 slid him -- you know, we all really know he did something, but
23 I just slid him under the door jamb.

24 If they don't prove beyond a reasonable doubt that
25 Rafi Brodjik committed each and every one of these crimes, you

D140cib2

Summation - Gerzog

1 have a duty, it would be breaking the law if you didn't vote
2 not guilty if you felt that they had not proved his guilt
3 beyond a reasonable doubt.

4 Now, none of the defendants testified, including
5 Mr. Brodjik. And again, you may think, well, gee, you know, if
6 people were gonna get up and say all of these bad things about
7 me, I sure as heck would want to say something back. Well,
8 that's not the way the system works. And you cannot hold --
9 and I will ask you, because I have had too many experiences
10 myself bumping into a juror in the hallway and having had
11 jurors say why didn't your guy tell me his side of the story.
12 And I -- and I -- I go like this. Because I say I tried to
13 explain that he has the Constitutional right to silence. And
14 that you can't hold his silence against him in any way, shape,
15 or form. And that those rights are as important as the rights
16 you have to freedom of religion, to freedom in your politics,
17 to freedom in every other way we, as Americans, enjoy freedom.
18 They are fundamental Constitutional rights. They are not
19 lawyer's tricks, they are not loopholes. You are required.
20 Judge Buchwald made it very clear to you I believe when she
21 selected you and during the selection process, that you are
22 required, whether you like it or not, whether you think it's
23 good idea or not, whether if you were in Congress or the
24 Continental Congress or some kind of Constitutional convention
25 you would vote for that yourself, that is the law and you must

D140cib2

Summation - Gerzog

1 follow it.

2 And ladies and gentlemen, the government, all 1, 2, 3,
3 4, 5 people at this table, have not proven any of the crimes
4 charged against Rafi Brodjik beyond a reasonable doubt.

5 Now, I'll say thank you, although your work is not yet
6 done. And I will ask for a verdict of not guilty for my
7 client.

8 THE COURT: All right. Now we'll have the
9 government's summation. After that, I'll give you a break
10 before we do the charge. Just candidly, it's less interesting,
11 but not less important, than the summations. It's little
12 dryer.

13 MS. ECHENBERG: Good morning, everyone. When I spoke
14 to you at the beginning of the trial, I asked you to do three
15 things. You have done one of those things. You sat here
16 patiently. You have been very attentive to all of the evidence
17 that has come in. Judge Buchwald is going to give you very
18 specific instructions on the law as soon as I'm done. And the
19 last thing for you to do is to use your common sense, to
20 continue to use your common sense as I point out some of the
21 pieces of evidence in light of the four summations that you
22 have heard from defense counsel.

23 I'm going to talk about each defendant, I'm going to
24 talk about them in order, and I'm going to start with
25 Mr. Brodjik because that's, of course, most fresh in your mind.

D240cib2

Summation - Mrs. Echenberg

1 There are several things that Mr. Gerzog just told you that
2 just aren't true. So I'm going to go over those first.

3 Let's start with government exhibit 410-2. This is
4 Rafi Brodjik's green card application. Rafi Brodjik had a
5 green card application. His own green card application through
6 the law firm. It was a derivative application from his wife's
7 application. If you look at part two on the first page, 410-2,
8 it's right here. If you look at the original exhibit, it's
9 Part 2B: My spouse or parent applied for adjustment of status
10 and was granted permanent residence, and I'm applying
11 derivative of that.

12 So what does that mean? Rafi Brodjik applied
13 derivative of his wife's fraudulent application.

14 How do you know it is fraudulent? Because Abraham
15 Flam was her sponsor for a bakery that was at a residence.

16 If you could bring up government exhibit 56. This is
17 a house, this is Abraham Flam's house. That's where the bakery
18 was, ladies and gentlemen. Come on, this whole thing was made
19 up. And you know it's made up because you heard testimony that
20 Rafi Brodjik was worried that Libney Milano or Earl David's
21 wife was going to blow the cover on the whole thing and he was
22 going to lose this application that is in process. Mr. Gerzog
23 talked about some dates. Again, he got it wrong. This
24 application, 410-2, if you look at the date of the application,
25 it is submitted September 30 of 2002. So of course Earl David

D240cib2

Summation - Mrs. Echenberg

1 is involved; of course there could have been a conversation
2 about Rafi Brodjik being concerned that the whole thing was
3 going to fall apart because the fraud is going to be exposed.
4 So you can put that out of your mind.

5 With regard to the substantive count, because of
6 course there is a conspiracy count here. And Judge Buchwald
7 will instruct you on that. That is about making an agreement
8 to break the law. There is also a substantive visa fraud count
9 for each of these defendants. And with respect to Rafi
10 Brodjik, it's very simple. He had his own green card
11 application that was based on fraud. And he aided and abetted
12 Earl David and David Grynsztajn in a false application for his
13 wife.

14 So all that you just heard about his wife, and what
15 she knew or didn't know, none of that matters to whether he
16 aided and abetted this application process that went through
17 for his wife, and then there is his own application that is
18 based on his wife's fraudulent application.

19 Nothing unclear about any of that.

20 Let's move on to his naturalization application.
21 Again, very clearcut. If we can bring up government
22 exhibit 410, page 3, section D on the bottom. Talks about
23 where he worked. There is no ambiguity here, ladies and
24 gentlemen. He does not list the Earl David law firm anywhere
25 in this list of where he has worked. And he covers the time

D240cib2

Summation - Mrs. Echenberg

1 period where you know he worked there. You saw a picture of
2 him in the law firm. You heard testimony about him being.

3 MR. GERZOG: Objection. The picture was taken, it
4 showed on the picture, 2003, not covered by this period.

5 THE COURT: Well, the jury's recollection on that will
6 govern.

7 MR. PASTORE: And regardless, ladies and gentlemen,
8 there is no real dispute that he worked at the law firm.
9 Nobody is disputing that. He doesn't list it on the
10 application. Why doesn't he list it? Because the law firm is
11 deep in investigation by then. And he doesn't want to raise up
12 to immigration that he worked at that law firm.

13 What else does he leave out? Let's look at page 8,
14 the top, section D. He doesn't say, when he is asked, have you
15 committed a crime for which you have not been arrested, he says
16 no. And now you have heard all of this evidence about the
17 fraud that he committed in Earl David law firm. But of course
18 he does not want immigration to know about that, because he is
19 not going to get to be a citizen if they know he is involved
20 with that. There is no ambiguity here, either.

21 Agents have already been to his house. He has already
22 interacted with law enforcement on this. You heard Nicholas
23 Cycyk tell you. The questions he is asked is have you had any
24 interaction with the police, with law enforcement. Yes, of
25 course, he has had interaction with the police and law

D240cib2

Summation - Mrs. Echenberg

1 enforcement.

2 MR. GERZOG: Objection. There is nothing on the form
3 that asks if you have had interaction.

4 THE COURT: But the interview is relevant to the
5 subsequent charge.

6 MR. PASTORE: So he answers that question no.

7 And Mr. Gerzog talked about why would he still have
8 all of these fraud documents in his house so long after? Lots
9 of people did. You heard about the files under the tarp in the
10 back of the house. You saw all of the client files that were
11 in the law firm when he was arrested. This stuff hung around,
12 regardless of the government's investigation. So I don't think
13 that gives you anything to hang your hat on there.

14 And don't forget about the lies he tells on page 8 at
15 the bottom. Questions 23 and 24. How have you ever given
16 false or misleading information to U.S. Government officials
17 when applying for immigration benefits. Take you back to the
18 green card application. Yes, that was fraud. And he doesn't
19 own up to that. So there is three places where there is
20 unambiguous lies in the naturalization application.

21 Now, there is another area where Mr. Gerzog tried to
22 tell you it wasn't clear, but it's very clear. There is
23 e-mails that Rafi Brodjik wrote, couldn't be clearer.

24 Let's bring out government exhibit 3608. Now,
25 Mr. Gerzog made an argument that Refael Brodjik's English isn't

D240cib2

Summation - Mrs. Echenberg

1 very good. And it may be that he had someone else write this
2 e-mail for him. But the contents of the e-mail, and the e-mail
3 address, they're him, there is no question about that. If we
4 can go down to the middle where the e-mails starts,
5 Rafibar@aryel1998@yahoo. You know that is his e-mail address.
6 You saw it on the public storage application where he gave his
7 drivers license, he gave his home address, and he gave that
8 e-mail address.

9 And you know it's his e-mail address because in an
10 exhibit that defense counsel submitted themselves, this is
11 slide C 48. You see that Rafi Brodjik is using this e-mail as
12 recently as January 9th of 2013. So this is his e-mail
13 address. He still using it in 2013. No question it's his
14 e-mail address.

15 And what about the content of the e-mail. He talks
16 about moving things to storage. If we could bring up 3608
17 again. And we went through this e-mail many times, so I'm not
18 going to go through it all again, but he talks about moving
19 things to storage. He talks about he and his wife working like
20 dogs to move the office. You know that is something that Rafi
21 Brodjik did. He talks about the money Sam Salamon stole, Sam
22 Salamon stole. You saw all of the other e-mails that Rafi
23 Brodjik wrote about his belief that Sam Salamon had stolen
24 money from him. You see the reference to Sunrise Food and
25 Monet in immigration applications. Why all of this detail, if

D240cib2

Summation - Mrs. Echenberg

1 this is not Rafi Brodjik writing this e-mail.

2 He talks about giving Earl David the ability to
3 operate remotely. And he says, right there in midst of his
4 role in the fraud, paragraph 7; you make it sound like all I
5 did was go into the office and collect money.

6 And then at the bottom, paragraph 11, he says: I will
7 deposit the money you think I stole from you. I will deposit
8 it into your account. And that matches up with that receipt
9 that Mr. Gerzog was waiving around.

10 This is a May 2006 e-mail, that's a may 2006 receipt.
11 So, again, no ambiguity about any of this So that is Refael
12 Brodjik.

13 Now, these e-mails, again, another point where there
14 is no ambiguity. These e-mails, they are found at his house.
15 These are original e-mails from Rafi Brodjik. They are printed
16 out in his house. They match up to the e-mails that were found
17 on Sam Salamon's computer.

18 If you look at government exhibit 3031-1, it's the
19 exact same e-mail, the content is the same as government
20 exhibit 3605. So these are Rafi Brodjik's e-mails, and the
21 ones on Sam Salamon's computer, they are all Rafi Brodjik's
22 e-mails, no question about it.

23 And the documents in his house. If we could just
24 bring up 3017, these are notes from Maritza Diaz, you remember
25 her, she is one of the lawyers involved in the fraud. She is

D240cib2

Summation - Mrs. Echenberg

1 laying out in detail all of the fraud documents that they need
2 to perpetrate this fraud. This stuff is sitting in his house.

3 Now, unless he just closed his eyes and didn't want to
4 know anything, he has to know what's going on in this fraud.
5 Just from what's in his house, putting aside all of the
6 testimony you heard about how he knew, and in his own words how
7 he tells you he knew.

8 And with regard to the religious worker applications.
9 His ability to speak English, might not matter that much. He
10 speaks Hebrew. So he can write experience letters in Hebrew.
11 He can interact with clients in Hebrew. And he has blank
12 letterhead for a religious organization in Brooklyn in his
13 house in Monsey. Why you does he have this in his house if he
14 is not working on religious worker applications, like the
15 cooperating witnesses told you that he was.

16 So those are all of the reasons that -- not all of the
17 reasons. Mr. Pastore told you many reasons. But those are
18 many of the reasons why Rafi Brodjik is guilty of the crimes
19 that he committed.

20 Before I move on to Ms. Cibik, I just want to spend a
21 moment on the to cooperating witnesses. All of the defendants'
22 counsel spent a lot of time talking to you about cooperating
23 witnesses, and their credibility, and trying to tell you you
24 shouldn't trust them, you shouldn't believe what they said.

25 Well, David Grynsztajn and Sam Salamon committed

D240cib2

Summation - Mrs. Echenberg

1 fraud. They committed a massive fraud. They're criminals. No
2 one is asking you to condone their behavior. What the
3 government is asking you to do is to evaluate their testimony
4 carefully.

5 Compare what David Grynsztajn said to what Sam Salamon
6 said, and compare what each of them said to all of the other
7 witnesses and all of the other documents. And when you do
8 that, you'll see that on the important components of their
9 testimony, it lines up, it is consistent and it is corroborated
10 with the documents.

11 Let's look at slide C43, please. If we could possibly
12 have the two testimonies side by side. Now this may be a
13 little bit hard for you to read. But what this is, is David
14 Grynsztajn and Sam Salamon's testimony -- if we could just --
15 David Grynsztajn's testimony and Sam Salamon's testimony about
16 Gulay Cibik's rants around the office where she would say she's
17 going to turn everyone in. The description is virtually
18 identical. She's jealous of David Grynsztajn's -- of Earl
19 David's wife. And she would go around and say she's gonna
20 bring everyone down.

21 Now, that's the kind of thing you would remember if
22 that happened in your office, right? And you remember it the
23 same way. These two men haven't spoken to each other in
24 7 years. They are not friends. But they both have this
25 distinct recollection of this sort of bizarre thing happening

D240cib2

Summation - Mrs. Echenberg

1 in the office.

2 And how can she go around threatening she's going to
3 bring everyone down? Because she has something on them.
4 Because she's in on the fraud; she's doing it, too.

5 Let's look at screen slide C 44, please. Again, David
6 Grynsztajn and Sam Salamon describe Rafi Brodjik collecting
7 money in the same way. They say it's every night, they say he
8 is coming around, how much did you make today. And he is
9 collecting money to transmit to Earl David. They describe it
10 in the same way.

11 They also both knew that Rafi Brodjik's application
12 for a green card was based on a substitution. Again, a small
13 fact, but a fact that they both remembered distinctly about
14 that application.

15 And if you look at the documents -- and I -- I only
16 have a limited time here, so I'm not going to go through
17 everything that Mr. Pastore went through. But if you go
18 through the documents, if you look at the client files, if you
19 look at this piece of paper, they both identified for those
20 fake work experience letters, fake job offer letters. On key
21 elements, they line up, they say the same thing of how the
22 fraud worked, and how the defendants were involved in the
23 fraud.

24 Now, defense counsel focused on these cooperating
25 witnesses only wanting to please the government. He said they

D240cib2

Summation - Mrs. Echenberg

1 would lie to please the government. I think what you need to
2 focus on here is what they didn't say. If they were just
3 trying to please the government, wouldn't they have lots to say
4 about every single defendant, and wouldn't they tie every
5 defendant to every piece of the fraud.

6 That's not what they did. David Grynsztajn didn't
7 have very much to say about Harold Tischler. He talked about
8 some plumbing business, he couldn't remember the name. He
9 talked about 387 Quincy, and he talked about the fact that the
10 sponsored businesses associated with Harold Tischler all came
11 back to the same address. That's it. He didn't have much more
12 to say. And that makes sense, because he was not dealing
13 directly with Harold Tischler.

14 He remembers a fight. He remembers Harold Tischler
15 wanting more money. But he doesn't have a lot of details on
16 Harold Tischler. And he had nothing to say about Nathan
17 Schwartz. And that makes sense.

18 So he is not pointing the finger at everyone, he is
19 not -- Mr. Gerzog talked about he is gonna do what he has to
20 do. Yeah. What he has to do, is tell the truth. That's what
21 he has to do. And he tells you what he knows, and what he
22 doesn't know.

23 Now, let me turn to Sam Salamon. He also told you
24 what he knew, and what he didn't know. He told you that Harold
25 Tischler would call back the Department of Labor when they

D240cib2

Summation - Mrs. Echenberg

1 called, he would speak to them when they called. He told you
2 Nathan Schwartz was a little skittish about that, he wouldn't
3 do it. Leo Teitelbaum would do it for him. Again, if he
4 wanted to nail these guys to the wall, he would say, yeah, they
5 both held back, they were both in on it. But, no, he tells you
6 the way it happened. And the Department of Labor call records
7 bear that out. And the telephone records bear that out. And
8 these are documents that Sam Salamon doesn't have. These are
9 documents Sam Salamon has no control of. But the story that he
10 tells you about what happened is born out by the documents.

11 He also tells you that the sponsors didn't know
12 anything about the phony tax records in the file. He kept that
13 from them. He told you that. He owned up to that. He didn't
14 point the finger at them for that part of the fraud. And the
15 lease that Harold Tischler signed. He tells you Harold
16 Tischler signed lease, but he is not sure about the guaranty
17 and he tells you that he signed the Maiden Lane lease without
18 Harold Tischler's knowledge. Again, if he wanted to point the
19 finger as strongly as he could, he would have said more. But
20 he only tells you what is true. He is not trying to please the
21 government, he is saying what is true.

22 On every major issue, the cooperators are consistent
23 with each other, they are consistent with the other witnesses,
24 and they are consistent with the documents in this case.

25 Now, let me turn to Ms. Cibik. Mr. Donaldson spent a

D240cib2

Summation - Mrs. Echenberg

1 lot of time talking about David Grynsztajn's words, Sam
2 Salamon's words, Ilhan Altintas' words. But you know what he
3 didn't talk about at all? Gulay Cibik's her own words. Her
4 confession to Agent Gordon. What did she tell Agent Gordon on
5 May 9, 2006, in her home? That she worked for Earl David. And
6 then she worked for Jed Philwin after Earl David lost his
7 license. That she worked with Ali Gomaa, he's up on the board.
8 And Abduhl and Josh. She talked about the co-conspirators that
9 she worked with. She talked about working at 110 Wall Street,
10 and in moving to 8082 Wall Street. And she talked about what
11 she did at the firm, that she was a Turkish translator first,
12 and then she started working with clients. She started
13 recruiting clients by putting an ad in the newspaper with her
14 phone number. And she took money from clients. She charged
15 them \$4,000 that if they had a sponsor, and \$7,000 if they
16 needed a sponsor. And you know why, because it cost more money
17 to perpetrate the fraud without the sponsors. And she obtained
18 the sponsors from Sam and Lipa. And you know who they are,
19 that's Sam Salamon and Leo Teitelbaum. And her own checks bear
20 this out. If we can bring up government exhibit 700, page 37.

21 (Continued on next page)

22

23

24

25

D241cib3

Rebuttal Summation - Ms. Echenberg

1 MS. ECHENBERG: Her checks bear this out. The top
2 check is a check to Sam Salamon and the bottom check is a check
3 to Hygia. That's another one of those phony sponsors, Andre
4 Herbst's company. He's right up there on the bottom row with
5 all the other fraud -- fraudulent sponsors here.

6 And here's the key point that she admits to the
7 agents. She says she understood that some professions were
8 easier to get approved, so she changed an alien's work
9 experience so they would match a job that had a better
10 likelihood of getting approved. That's the fraud right there,
11 ladies and gentlemen. That's exactly what Ilhan Altintas told
12 you happened when he took the stand and he testified.

13 Now let's take a quick look at Government Exhibit
14 3611, another document that Mr. Donaldson didn't talk about,
15 where Earl David says that Gulay Cibik made a hundred thousand
16 dollars off of him. And if you look at her bank statements,
17 they bear this out. Every month there's 10 or \$20,000 getting
18 deposited. And where did it go? Thousands of dollars in
19 jewelry, designer brands, trips to Turkey, all there in
20 Government Exhibit 700. And then in May of 2006, when she is
21 confronted by the agents, that's when it goes to zero. That's
22 when all the money --

23 MR. DONALDSON: Object to the fancy jewelry and all
24 the other stuff.

25 THE COURT: Ladies and gentlemen, you will have the

D241cib3

Rebuttal Summation - Ms. Echenberg

1 bank records, and you can read them for yourselves and see what
2 the expenditures are, what checks are written, and what is
3 deposited.

4 MS. ECHENBERG: So let's talk for a moment about Ilhan
5 Altintas. Yes, he committed a fraud. He told you that. He
6 owned up to that. Where did he go to commit his fraud? He
7 went to Gulay Cibik. And she was good at it. So he brought
8 his relatives too. And who was the sponsor for one of his
9 relatives? Andre Herbst. Same guy we were just talking about.
10 Fraudulent sponsor. This time it was a mechanics shop. But if
11 you look at the application, the e-mail address is Hygia,
12 @hygia.

13 Now Mr. Donaldson tried to confuse you with some
14 dates, but let's go over the dates that matter. In Ilhan
15 Altintas' application -- this is 1501-2, page 9 -- the
16 application date is May 2nd, 2006. And if you look at
17 Government Exhibit 707 -- that's Ilhan Altintas' check to her,
18 to Gulay Cibik, to the law firm -- that's May 6, 2006, and he
19 says Case Approval Fee. The Department of Labor application
20 goes in on May 2nd, 2006. And then they're moving on to the
21 next part of the process on May 6, 2006. And then, Ilhan --
22 Ilhan Altintas said, then she disappears, and he can't find her
23 anymore. Well, that makes sense, because she's approached by
24 the government on May 9th, 2006.

25 You saw Mr. Altintas testify. You are the judge of

D241cib3

Rebuttal Summation - Ms. Echenberg

1 his credibility. I submit to you that he was calm and he was
2 thoughtful when he was answering questions, his answers made
3 sense in the context of the other testimony and the documents,
4 and his testimony is corroborated by Gulay Cibik's own words in
5 her confession to the agents.

6 I'm going to talk for just a moment about the
7 extraordinary ability applications. You heard what the CIS
8 witness said about the extraordinary ability. It's a receipt
9 of nationally or internationally recognized prizes, and when
10 she was asked, "Would a Nobel Prize do it?" she said, "Yeah,
11 that would do it." So these are people who are out-of-bounds
12 extraordinary. And how many of these clients did Gulay Cibik
13 have? Well, just based on a small stack of checks found in Leo
14 Teitelbaum's house that were associated with Gulay Cibik -- if
15 we could look at Government Exhibit 3032 starting with page 10.

16 This is just one example, but there were three checks
17 that had the name of an alien and they have Gulay written next
18 to them. Three checks found in Leo Teitelbaum's house with
19 Gulay Cibik's name on them. And what do we find when we look
20 at the coordinating exhibits? They're all extraordinary
21 disability. So miraculously, she has three. And there's a
22 fourth in Refeal Brodjik's house. Government Exhibit 3040.
23 There's another file, and with that file there's a letter to
24 Ms. Gulay. So at a firm where there's no dispute there's a
25 tremendous amount of fraud going on, Gulay Cibik has the good

D241cib3

Rebuttal Summation - Ms. Echenberg

1 fortune to have four clients who are so extraordinary, so
2 recognized in their field that they qualify for this very
3 special type of application? No. It's a fraud. They're not
4 extraordinary. These clients don't have extraordinary ability.
5 It's fraud. Gulay Cibik is making it up, just like the
6 witnesses told you that she was.

7 I want to turn now to Nathan Schwartz. I want to
8 start with Slide C47.

9 What we have on this slide is a comparison of his
10 taxes, and you see where it says no payroll and then it says he
11 permanently ceased paying wages, please list the date, and the
12 date there is hard to see, but it's July 31st, 2006. So as
13 of July 31st, 2006, he has no payroll and he's permanently
14 ceased wages.

15 But if you look at Government Exhibit 1209-5 and look
16 up the next page of this slide -- oh, it's right there on the
17 bottom. Sorry. There it is. On his application for his two
18 legitimate workers, he certifies, "I will be able to place the
19 alien on payroll on or before the date of the alien's entrance
20 into the United States." And he signs this document on
21 July 13th, 2006. So he's cert -- Nathan Schwartz is
22 certifying to the Department of Labor that these two employees,
23 you know, he can put them on payroll and they're going to have
24 a job and he's sponsoring them for that job. Well, at the same
25 time he's telling the tax authorities that he's not paying

D241cib3

Rebuttal Summation - Ms. Echenberg

1 payroll anymore, that he has no payroll.

2 So even if you just focus on those two applications
3 for Henry Castillo and José Torres, those are fraudulent. But
4 you know that's not all Nathan Schwartz did. Between July 2006
5 and January 2009 -- that's a 31-month period -- there are 173
6 applications associated with his company submitted -- his
7 companies submitted to the Department of Labor. And they go to
8 three different addresses. The mail associated with those
9 applications goes to three different addresses that are
10 controlled by Nathan Schwartz. There's no serious dispute that
11 214 Route 59, that first address, is his. He couldn't deny it
12 because he's associated with that address through his own
13 corporate documents. And we see that -- you don't need to
14 bring it up, but it's Government Exhibit 306, 3072, and the
15 Department of State records. Now all of the mail associated
16 with these five applications goes to 214 Route 59. Right?

17 Now you also have 46 Main Street. There's also no
18 dispute that that address is associated with Nathan Schwartz.
19 He couldn't deny it because we showed you the document where he
20 applied for that mailbox. That's Government Exhibit 303. And
21 the owner of the shop, Isaac Srugo, took the stand and told you
22 he knows Nathan Schwartz and he's seen him in that mailbox
23 location, so he couldn't deny that. All the mail associated
24 with these applications, these and these and these
25 (indicating), those all go to 46 Main Street. That's 38

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Rebuttal Summation - Ms. Echenberg

1 applications.

2 So even if he only knew about and participated in the
3 fraud associated with these 43 applications, he's guilty. But
4 you know it's more than that. You know there's a third
5 address. That's 455 Route 306. That's the rest of the
6 documents in this cart up on the top. Now you know that Nathan
7 Schwartz is getting bank statements to 455 Route 306. He
8 changes his address with his bank in February 2010 to reflect
9 that address. That's Government Exhibit 301. If you look at
10 page 16, versus page 17, he has one address, and then in
11 February of 2010, he changes it to 455 Route 306. This is his
12 bank account. This is him changing it to that address.

13 So what defense counsel would have you believe is that
14 Nathan Schwartz didn't control that mailbox when mail
15 associated with those 130 applications came between August 2006
16 and 2009, but in some bizarre and very unlucky coincidence,
17 Nathan Schwartz takes over a mailbox in 2010 that's been
18 receiving mail for him for the last three years. It doesn't
19 make any sense. Of course he had control over that mailbox
20 that entire time period, and that's where the mail associated
21 with these additional 130 applications went.

22 So that's 173 applications, over a 31-month period.
23 That's about five pieces of mail a month. Now I don't care how
24 smooth of a schmoozer you are. You can't talk your way out of
25 that much mail. There's no way there can be that much mail

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1 associated with something that you don't know anything about
2 and you're not a part of it and you don't understand.

3 Now it's not just the volume of mail. It's the phone
4 calls from the Department of Labor. Three times when the
5 Department of Labor calls, Nathan Schwartz calls Sam Salamon
6 immediately after.

7 If we could bring up Slide C23.

8 And you see that right after the Department of Labor
9 called up, the top call on the call record, there's outgoing
10 calls to Sam Salamon and then to Leo Teitelbaum, and then
11 eventually there's a 14-minute call with Leo Teitelbaum. Now
12 Nathan Schwartz and Leo Teitelbaum aren't friends. They're
13 involved in this fraud together, and that's why they're talking
14 about this. And then the call notes bear this out. See
15 number 3 at the top. "Leo called back and confirmed
16 sponsorship." It's just like how Sam Salamon described to you
17 that it would work. And you see this again.

18 If we can bring up Slide C49.

19 This is actually an exhibit that defense counsel
20 admitted. This was NS2. And you see again, it's Leo
21 Teitelbaum's number that's calling back and confirming
22 sponsorship. And that's after the Department of Labor called.
23 And then there's a three-way phone call that involved Sam
24 Salamon, right after the Department of Labor called.

25 And if you can bring up quickly C24.

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1 Again, same thing. Immediately the call is to
2 Department of Labor -- excuse me. Immediately the call is to
3 Sam Salamon after Department of Labor calls and ultimately,
4 it's confirmed.

5 And then if we can bring up C35.

6 Same thing, except now they're using an alias, Arnold
7 Goldenberg, but it's the same number. It's that 7455 number,
8 and there's no dispute that that's Nathan Schwartz's phone
9 number.

10 And then there are the voice mails. Nathan Schwartz
11 checks his voice mail on days where the Department of Labor
12 call logs reflect that they left a voice mail for Nathan
13 Schwartz, and then the very next communication is with Sam
14 Salamon or Leo Teitelbaum. In one instance there's a call out
15 to Sam Salamon and there are also calls coming in from Sam
16 Salamon, and Mr. Schwartz tried to make you believe that that
17 means something. But when you look at the evidence and you use
18 your common sense, you know that Nathan Schwartz and Sam
19 Salamon communicated by text message. You know they
20 communicated by e-mail. There are other ways that Nathan
21 Schwartz can let Sam Salamon know: Hey, Department of Labor
22 left me a voice mail. You've got to do something about it.
23 And then they do. They confirm it, the application is
24 approved, it comes to him at one of these addresses, and what
25 does he do? He brings it over to Sam Salamon, gets paid, and

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1 it proceeds to the immigration process.

2 There's also Government Exhibit 1054-A. That's the
3 number that goes in and out of service. And again, those line
4 up with the phone records showing that phone was out of service
5 for a while and then it came back into service, and Nathan
6 Schwartz, or someone on his behalf, confirmed that sponsorship.
7 And where is that phone number registered, the phone number
8 that's associated with this application? It's registered to
9 Bliss 9, although the company for this application is the Sharp
10 Shopper, which you know is Nathan Schwartz's company because
11 his home address is used to register this company and his name
12 is on the application. But the phone number that's associated
13 with this application is registered to Bliss 9, another one of
14 the Nathan Schwartz companies used in these applications. And
15 what address is that phone registered to? 455 Route 306.
16 Again, another unlucky coincidence? No. This is an address
17 and these are companies that Nathan Schwartz is providing to
18 Sam Salamon to perpetrate this fraud.

19 Now Mr. Schwartz would have you believe that he's some
20 sort of victim of ID theft by his old friend Sam Salamon, that
21 Sam Salamon stole information from some binders, although of
22 course there was no evidence about the existence of those
23 binders, and that Sam Salamon went into his office, although
24 there was no evidence that Sam Salamon was in his office until
25 after the fraud. Putting that all aside, Mr. Schwartz would

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1 have you believe that he was the victim of an ID theft by Sam
2 Salamon. If that's the case, why didn't he withdraw a single
3 application? Why did he let those calls from Department of
4 Labor go to voice mail? Why didn't he pick up the phone and
5 say, "No, I'm not the sponsoring these people, I don't know
6 anything about this, stop calling me"? He doesn't do that. He
7 lets it go on and on and on and on because he's part of it.
8 Because he's getting paid to participate in it.

9 Finally, turning to Harold Tischler. Mail -- now this
10 bottom row of this cart (indicating) -- and I'm not going to
11 load it all up for you again. You've seen it. But I'll tell
12 you that the bottom row of this cart is all of the applications
13 associated with Harold Tischler. 99 applications. Mail
14 associated with 99 applications goes to his home, mail
15 associated with 30 applications goes to his office, and mail
16 associated with another 108 applications goes to the law firm,
17 but much of it is cc'd to his house or to his office.

18 So between July 2005 and January 2009 -- that's 43
19 months -- let's just take what's goes directly to his house and
20 his office and forget about what he's cc'd on. That's 108
21 applications. And that's just having one piece of mail for
22 each application. And you know Department of Labor sometimes
23 sent sometimes two or three pieces of mail. And then there's
24 all the immigration mail; right? So again, a tremendous
25 quantity of mail coming to his house and to his office.

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1 But it's the call notes that are really devastating to
2 Mr. Tischler's claims of confusion and gullibility. Let's look
3 at the questions that are actually being asked during those
4 calls.

5 This is Government Exhibit 3104-A, page 4. If you see
6 page 4 -- actually, go back one page. I'm sorry. Yeah. You
7 see those sponsorship questions at the bottom? If we could
8 blow those up.

9 These are the questions that Alyssa McGovern explained
10 to you are asked. I want you to focus in on that last
11 question. "Are you sponsoring Padam Shreshta for this
12 position?" Department of Labor is asking: Are you sponsoring
13 this particular person? The question is, are you sponsoring
14 this person for this job, construction, carpenter, and are you
15 doing so because you can't find an American to do the job?
16 Not, did you hire some unexperienced people a long time ago who
17 approached you on the street? No. Are you hiring this
18 particular person?

19 And what does Harold Tischler say over and over when
20 the Department of Labor calls? "Yes, I'm hiring this person."
21 "Yes, I'm hiring this person." He never met these people. He
22 has nothing to do with these people. But he's lying over and
23 over to the Department of Labor and saying, "Yes, I'm hiring
24 this person."

25 Let's go very quickly through Slide C12 through C21.

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1 Starting with C12.

2 You see, "Spoke with Harold Tischler, who confirmed
3 sponsorship." And the call records bear this out.

4 C13. "Verified information with contact."

5 C15. And there -- let's blow up line 1, if we could,
6 under the call. Sorry. Yes. If you could blow that up,
7 please.

8 "Spoke with Harold Tischler and confirmed sponsorship
9 for Ruslam Maletych. This case has passed." And I submit to
10 you, if you look at the other call notes, they're the same.
11 Confirmed sponsorship for these particular people who you know
12 he's not sponsoring. He's getting paid to say that to the
13 Department of Labor.

14 Now you know he signed that lease too. You heard the
15 testimony about it. And if we can look at Slide C40.

16 Mr. Grynsztajn suggested that you compare --

17 MR. GREENFIELD: Greenfield.

18 MS. ECHENBERG: Excuse me. Greenfield. I apologize.
19 Mr. Greenfield suggested that you compare the signature on the
20 lease to the signature on this application for a post office
21 box, which there's no dispute is Harold Tischler's own
22 application. So I prepared that for you.

23 If we can look at Government Exhibit C41.

24 If you look at both the handwriting and the signature.
25 Now you are the judges, not me, but I submit to you that the

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1 signature and the handwriting looks very similar on the lease
2 that Harold Tischler signed and on his own P.O. box
3 application.

4 There's another company that came up briefly. That's
5 L & T Realty. That's a Delaware company that was established
6 in Harold Tischler's name, and I submit to you that Harold
7 Tischler knew about this too. If you look at Government
8 Exhibit 3043, page 1, there's a letter that goes to Harold
9 Tischler's home address talking about the phone forwarding
10 that's been set up in connection with this company, and if you
11 look at pages 3 and 4 in this exhibit, you'll see that it's all
12 of Harold Tischler's personal information again, his home
13 address, the HARRYTHEMN e-mail, everything associated with him.

14 But what Mr. Greenfield didn't focus on when he was
15 talking about this document is page 22. And if we could blow
16 up the very top of that, you'll see that there's a fax header
17 at the top. And what does that fax header say? It says from
18 Harold Tischler to Sam Salamon. So you know Harold Tischler is
19 involved because he's forwarding this fax for the incorporation
20 documents for this company from him to Sam Salamon.

21 So I want to end with Harold Tischler's own words.
22 Let's bring up Government Exhibit 505-A.

23 He says in this text, "Always keeping me waiting,
24 always making me come back." Waiting for what? Come back for
25 what? To get paid, for turning over the new pieces of paper so

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1 that they could be used in phony immigration applications. And
2 he talked about filing documents with Department of Labor. He
3 knows about it. He knows what's going on. And he's part of
4 it.

5 And if we could look now at Government Exhibit 501.

6 What does Harold Tischler say to Sam Salamon, last
7 summer? "Moiser you put me in jail wow." Sam Salamon, you're
8 a rat, you're a snitch, you told the government what I did.
9 That's what he's saying in that text.

10 So ladies and gentlemen, when you use your common
11 sense, when you apply that common sense to all of the evidence
12 that you've heard in this case and the law as Judge Buchwald is
13 going to instruct you, you will come to the only conclusion
14 that's consistent with the facts and the law, that each of
15 these defendants -- Gulay Cibik, Refeal Brodjik, Harold
16 Tischler, and Nathan Schwartz -- were all active and knowing
17 participants in this massive fraud. They are all guilty as
18 charged.

19 Thank you.

20 THE COURT: Thank you. Okay. Let's take our break.
21 The rules still apply. A little longer, guys. All right. No
22 talking about the case. Keep an open mind. And see you soon.

23 (Jury excused)

24 THE COURT: Okay. Why don't we get back at ten to 12.

25 (Recess)

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(In open court; jury not present)

MR. GUTMAN: Your Honor, I'd like to raise something before the jury comes back.

THE COURT: What's that?

MR. GUTMAN: I have an application.

THE COURT: Okay.

MR. GUTMAN: And I didn't want to make this until after consulting with my client about the potential ramifications, were we to raise this motion.

In our view, we most respectfully object to the court's rebuking of Mr. Gerzog with regard to the suggestion that the jury could draw an inference based on Agent Gordon's testimony or lack of testimony. We submit that it is proper and -- to draw the jury's attention to what the agent testified to and to what the agent didn't testify to.

THE COURT: That's not what he did. What he did was on two occasions say -- I remember clearly the first, with respect to the Israeli bakery. What he said was, maybe she called or contacted them and they returned an answer that she didn't like or she didn't do it. That raised a *Brady* problem. That was the problem. It wasn't anything about government techniques. And he did it a second time. He got away with it time one. The government didn't pop up fast enough. I noticed it. By time two, that's unacceptable.

MR. GERZOG: Most respectfully, Judge, I don't think

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1 you have the right to vouch for the honesty of the government.
2 I'm not saying the government's dishonest, but I don't think
3 you have the right to vouch for the honesty of the government.

4 MR. GUTMAN: And your Honor, I have a somewhat
5 different recollection of what he said, and we can check the
6 transcript. I don't believe he talked about getting an answer
7 she didn't like. He talked about --

8 THE COURT: Yes, he did.

9 MR. PASTORE: That was actually the exact words. I
10 just checked the transcript prior to your Honor coming out.

11 MR. GUTMAN: Well, I believe what he said is she
12 testified about going to a particular location. She didn't
13 testify about the other location that was associated with the
14 bakery. But our true concern, your Honor, is that particularly
15 because the court is held in high esteem by the jury, to
16 insinuate that Mr. -- or not insinuate -- to state that
17 Mr. Gerzog was doing something improper and with the
18 implication that he's trying to get away with something, when I
19 don't think that was the case, and also, to state, whether it's
20 true or not, that in the court's view, the government would
21 have done the honorable thing or the right thing in a
22 particular context, I think it put Mr. Gerzog and the entire
23 defense in an unfair light and I think it has prejudiced
24 Mr. Brodjik's right to a fair trial, and based on that, I most
25 respectfully move for a mistrial.

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1 THE COURT: Denied.

2 Is there anything else that prevents us from calling
3 the jury in?

4 MR. GERZOG: No, your Honor.

5 MR. DONALDSON: I'm just maximizing my standup time.

6 THE COURT: That's okay.

7 (Jury present)

8 THE COURT: Ladies and gentlemen, it's not necessary
9 to start reading the indictment out. I'm just going to ask you
10 to read portions of it to yourself to enable me to save my
11 voice.

12 All right. Ladies and gentlemen, my duty at this
13 point is to instruct you as to the law. I will endeavor to be
14 as clear as possible. It is your duty to accept these
15 instructions of law as I give them to you and apply them to the
16 facts as you determine them. I know that you will try the
17 issues that have been presented to you according to the oath
18 which you have taken as jurors in which you promised that you
19 would well and truly try the issues in this case and render a
20 true verdict.

21 You, the members of the jury, are the sole and
22 exclusive judges of the facts. You pass upon the weight of the
23 evidence; you determine the credibility of the witnesses; you
24 resolve any conflicts in the testimony; and you draw whatever
25 reasonable inferences you decide to draw from the facts as you

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1 have determined them.

2 You should not single out any instruction as alone
3 stating the law, but you should consider my instructions as a
4 whole when you retire to deliberate in the jury room. To that
5 end, you will be permitted to take a copy of these instructions
6 with you into the jury room.

7 The defendants in this case, Gulay Cibik, Refeal
8 Brodjik, Nathan Schwartz, and Harold Tischler, entered pleas of
9 not guilty to the indictment. As I told you before, the law
10 presumes the defendants to be innocent of all the charges
11 against them. I therefore instruct you that each defendant is
12 to be presumed by you to be innocent throughout your
13 deliberations until such time, if ever, you as a jury are
14 satisfied that the government has proven him or her guilty
15 beyond a reasonable doubt.

16 The burden is on the prosecution to establish each of
17 the defendants' guilt beyond a reasonable doubt with respect to
18 each element of the offenses charged against that defendant.
19 The burden of proof never shifts to a defendant in a criminal
20 case, and the law never imposes on a defendant the obligation
21 of doing anything in a criminal trial. Nor does the law impose
22 upon a defendant the burden or duty of calling any witnesses or
23 of producing any evidence. The presumption of innocence alone
24 is sufficient to require an acquittal of the defendants unless
25 and until, after careful and impartial consideration, of all

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1 the evidence, you, as jurors, unanimously are convinced of each
2 of the defendants' guilt beyond a reasonable doubt.

3 The law does not require that the government prove
4 guilt beyond all possible doubt; proof beyond a reasonable
5 doubt is sufficient to convict. The question that naturally
6 comes up is - what is a reasonable doubt? The words almost
7 define themselves. Reasonable doubt is a doubt that appeals to
8 your reason, your judgment, your experience, your common sense.
9 It is doubt that a reasonable person has after carefully
10 weighing all the evidence. It is not caprice, whim, or
11 speculation. It is not an excuse to avoid the performance of
12 an unpleasant duty. It is not sympathy for a defendant. Proof
13 beyond a reasonable doubt must therefore be proof of such
14 convincing character that a reasonable person would not
15 hesitate to rely and act upon it in the most important of his
16 or her own affairs.

17 If, after a fair, impartial, and careful consideration
18 of all the evidence, you can candidly and honestly say that you
19 are not satisfied of the guilt a defendant, that is, if you
20 have such a doubt as would cause you, as a prudent person, to
21 hesitate before acting in matters of importance to yourself,
22 then you have a reasonable doubt, and in that circumstance it
23 is your duty to acquit that defendant.

24 On the other hand, if, after a fair, impartial, and
25 careful consideration of all of the evidence, you can candidly

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1 and honestly say that you are satisfied of the guilt of a
2 defendant and that you do not have a doubt that would prevent
3 you from acting in important matters in the personal affairs of
4 your own life, then you have no reasonable doubt, and under
5 such circumstances you should convict that defendant.

6 The indictment charges a total of six counts. Each
7 count charges one or more defendants with a different crime.

8 There are four defendants on trial before you. You
9 must, as a matter of law, consider each count of the indictment
10 and each defendant's involvement in that count separately, and
11 you must return a separate verdict on each defendant for each
12 count in which that defendant is charged.

13 In reaching your verdict, please bear in mind that
14 guilt is personal and individual. Your verdict of guilty or
15 not guilty for each defendant must be based solely upon the
16 evidence about that defendant. The case against each
17 defendant, on each count, stands or falls upon the proof or
18 lack of proof against that defendant alone, and your verdict as
19 to any defendant on any count should not control your decision
20 as to any other defendant on the same or any other count. No
21 other considerations are proper.

22 The evidence before you consists of the answers given
23 by witnesses - the testimony they gave, as you recall it - the
24 exhibits that were received in evidence, and the stipulations
25 entered into by the parties.

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1 As I indicated to you at the beginning of the trial,
2 certain things are not evidence and must not be considered by
3 you in your deliberations.

4 First, the exhibits marked for identification but not
5 received may not be considered by you as evidence.

6 Second, what the lawyers say in opening statements, in
7 closing arguments, or in objections is not evidence.

8 Similarly, you should bear in mind that a question put to a
9 witness is never evidence; it is only the answer that is
10 evidence. Be mindful that it is the duty of the attorney for
11 each side of the case to object when the other side offers
12 testimony or other evidence that the attorney believes is not
13 properly admissible. Nor is anything I may have said during
14 the trial or may say during these instructions with respect to
15 a matter of fact to be taken in substitution for your own
16 independent recollection, nor should you consider anything I
17 have said or may say as indicating that I have any opinion as
18 to what your verdict should be. However, testimony that the
19 court has excluded or told you to disregard is not evidence and
20 must not be considered. If you are instructed that some item
21 of evidence is received for a limited purpose only, you must
22 follow that instruction.

23 Third, anything you have heard outside the courtroom
24 is not evidence and must be disregarded. You are to decide the
25 case solely on the evidence presented here in the courtroom.

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1 Fourth, any notes that you may take are not evidence.
2 Your notes may be used solely to assist you and are not to
3 substitute for your recollection of the evidence in the case.
4 The fact that a particular juror has taken notes does not
5 entitle that juror's views to any greater weight than those of
6 any other juror.

7 Now there are two types of evidence that you may
8 properly use in reaching your verdict.

9 One type of evidence is direct evidence. Direct
10 evidence is when a witness testifies about something he or she
11 knows by virtue of his or her own senses -- something he or she
12 has seen, felt, touched, or heard. Direct evidence may also be
13 in the form of an exhibit, where the fact to be proved is its
14 present existence or condition.

15 Circumstantial evidence is evidence that tends to
16 prove a disputed fact by proof of other facts. There is a
17 simple example of circumstantial evidence that is often used in
18 this courthouse.

19 Assume that when you came into the courthouse this
20 morning, the sun was shining and it was a nice day. Assume
21 that the courtroom blinds were drawn and you could not look
22 outside. As you were sitting here, someone walked in with an
23 umbrella that was dripping wet. Then a few minutes later
24 another person also entered with a wet umbrella. Now you
25 cannot look outside the courtroom and you cannot see whether or

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1 not it is raining, so you have no direct evidence of that fact.
2 But on the combination of facts that I have asked you to
3 assume, it would be reasonable and logical for you to conclude
4 that it had been raining.

5 That is all there is to circumstantial evidence. You
6 infer on the basis of reason, experience, and common sense from
7 one established fact the existence or nonexistence of some
8 other fact.

9 Circumstantial evidence is of no less value than
10 direct evidence. As a general rule, the law makes no
11 distinction between direct and circumstantial evidence, and you
12 may consider both in reaching your conclusion as to whether the
13 government has proven its case against any defendant beyond a
14 reasonable doubt.

15 Many material facts -- such as state of mind -- are
16 rarely susceptible of proof by direct evidence. Usually such
17 facts are established by circumstantial evidence and the
18 reasonable inferences that you draw.

19 In this case you have heard evidence in the form of
20 stipulations that contain facts that were agreed by the parties
21 to be true. You must accept those stipulated facts as true.

22 You have also heard evidence in the form of
23 stipulations of testimony. A stipulation of testimony is an
24 agreement among the parties that, if called as a witness, a
25 person would have given certain testimony. You must accept as

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1 true the fact that the witness would have given that testimony.
2 However, it is for you to determine the weight to be given to
3 that testimony.

4 The government has presented exhibits in the form of
5 charts and summaries. These charts are visual representations
6 of information as set forth in the testimony of witnesses,
7 stipulations, or documents. They purport to summarize the
8 underlying evidence that was used to prepare them and were
9 shown to you to make other evidence more meaningful and to aid
10 you in considering the evidence during your deliberations.
11 They're not themselves independent evidence. Therefore, you
12 are to give no greater weight to these charts and summaries
13 than you would give to the evidence on which they are based.

14 It is for you to decide whether the charts, schedules,
15 and summaries correctly present the information contained in
16 the testimony and in the exhibits on which they were based. In
17 the event that a chart, schedule, or summary differs from your
18 recollection of the testimony or actual documents on which the
19 schedule or summary is based, you are to rely on the testimony
20 or actual document, not the chart, schedule, or summary. You
21 are entitled to consider the charts, schedules, and summary if
22 you find that they are of assistance to you in analyzing and
23 understanding the evidence.

24 You have heard evidence during the trial that
25 defendant Gulay Cibik made statements to law enforcement

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1 authorities. Evidence of those statements was properly
2 admitted in this case and may be properly considered by you.
3 You may give the statements such weight as you feel they
4 deserve in light of all the evidence. However, whether you
5 approve or disapprove of the use of these statements may not
6 enter into your deliberations.

7 You have also heard testimony about evidence seized in
8 searches of various locations. Evidence obtained from these
9 searches was properly admitted in this case and may be properly
10 considered by you. Whether you approve or disapprove of how
11 the evidence was obtained should not enter into your
12 deliberations, because I instruct you that the government's use
13 of this evidence is entirely lawful. You must, therefore,
14 regardless of your personal opinion, give this evidence full
15 consideration along with all the other evidence in the case in
16 determining whether the government has proved each defendant's
17 guilt beyond a reasonable doubt.

18 You have heard reference, in the arguments and
19 cross-examination of defense counsel in this case, to the fact
20 that the government did not use certain investigative
21 techniques. There is no legal requirement, however, that the
22 government prove its case through any particular means. While
23 you are to carefully consider the evidence adduced by the
24 government, you are not to speculate as to why they used the
25 techniques they did or why they did not use other techniques.

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1 Your focus should be on whether, on the evidence or lack of
2 evidence, the defendants' guilt has been proven beyond a
3 reasonable doubt. The government is not on trial, and law
4 enforcement techniques are not your concern.

5 There are people whose names you heard mentioned
6 during the course of the trial but who did not appear to
7 testify. One or more of the attorneys has referred to their
8 absence from the trial. The government is not required to
9 prove its case through the testimony of any particular
10 witnesses. Nor do the defendants have any burden or duty to
11 call any witnesses or produce any evidence. You should not
12 draw any inferences or reach any conclusions about what these
13 uncalled witnesses would have testified to had they been
14 called. Their absence should not affect your judgment in any
15 way. Again, your concern is to determine whether, on the
16 evidence that has been admitted or the lack thereof, the guilt
17 of the defendants has been proven beyond a reasonable doubt.

18 During the trial you have heard the attorneys use the
19 term "inference," and in their arguments they have asked you to
20 infer, by using your reason, experience, and common sense, the
21 existence of some fact from one or more established facts. An
22 inference is not a suspicion or a guess. It is a reasoned and
23 logical decision to conclude that a disputed fact exists on the
24 basis of another fact that you know exists. In drawing
25 inferences, you should exercise your common sense. There are

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1 times when different inferences may be drawn from facts,
2 whether proved by direct or circumstantial evidence. The
3 government asks you to draw one set of inferences while the
4 defense attorneys ask you to draw another. Whether or not to
5 draw a particular inference is, of course, a matter exclusively
6 for you to determine, as are all determinations of fact.

7 You have heard testimony from government witnesses who
8 have pleaded guilty to the same or similar charges as those
9 contained in the indictment. You are instructed, however, that
10 you are to draw no conclusions or inferences of any kind about
11 the guilt of the defendants merely from the fact that a
12 government witness or an alleged co-conspirator pleaded guilty
13 to the same or similar charges. The decisions of those
14 individuals to plead guilty were personal decisions about their
15 own guilt and may not be used by you in any way to infer the
16 guilt of the defendants.

17 Further, you are not being asked whether any person
18 other than the defendants here on trial has been proven guilty.
19 In that vein you may not draw any inference, favorable or
20 unfavorable, toward the government or the defendants from the
21 fact that certain persons are not on trial here. Those matters
22 are wholly outside your concern and have no bearing on your
23 function as jurors in deciding the case before you.

24 Now you have had an opportunity to observe all of the
25 witnesses. It is now your job to decide how believable the

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Charge

1 witnesses were in their testimony. You are the sole judges of
2 the credibility of each witness and of the importance of their
3 testimony.

4 Your decision whether or not to believe a witness may
5 depend on how that witness impressed you. Was the witness
6 candid, frank, and forthright, or did the witness seem as if he
7 was hiding something, being evasive or suspect in some way?
8 How did the way the witness testified on direct examination
9 compare with how the witness testified on cross-examination?
10 Was the witness consistent in his or her testimony, or did the
11 witness contradict himself or herself? Did the witness appear
12 to know what he or she was talking about, and did the witness
13 strike you as someone who was trying to report his or her
14 knowledge accurately?

15 How much you choose to believe a witness may be
16 influenced by their potential bias. Does the witness have a
17 relationship with the government or a defendant that may affect
18 how he or she testified? Does the witness have some incentive,
19 loyalty or motive that might cause them to shade the truth; or
20 does the witness have some bias, prejudice, or hostility that
21 may have caused them -- consciously or not -- to give you
22 something other than a completely accurate version of the facts
23 they testified to?

24 Even if a witness was impartial, you should consider
25 whether that witness had an opportunity to observe the facts he

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Charge

1 or she testified about. Also, ask yourselves whether the
2 witness' recollection of the facts stands up in light of all
3 the other evidence.

4 Witnesses may be inaccurate, contradictory, or even
5 untruthful in some respects and yet may be entirely credible in
6 the essence of their testimony. It is for you to say whether a
7 witness' testimony is truthful or not, in whole or in part, in
8 light of the witness' demeanor, statements, and all of the
9 evidence.

10 You have heard from witnesses who testified that they
11 were actually involved in the crimes charged in the indictment,
12 as well as other crimes, and who subsequently pled guilty to
13 their criminal conduct pursuant to what is called a cooperation
14 agreement with the government. There has been a great deal
15 said about these so-called cooperating witnesses and whether or
16 not you should believe them in the summations of counsel.

17 The government is permitted to enter into these kinds
18 of agreements. Indeed, not only does the law allow the use of
19 cooperating witness testimony, but such testimony may be enough
20 in itself for a conviction if the jury finds that the testimony
21 establishes a defendant's guilt beyond a reasonable doubt.

22 However, you should bear in mind that a witness who
23 has entered into a cooperation agreement has an interest in
24 this case different from that of an ordinary witness. A
25 witness who realizes that he may be able to obtain his own

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Charge

1 freedom or receive a lighter sentence by giving testimony
2 favorable to the prosecution may have a motive to testify
3 falsely. Therefore, you should examine such testimony with
4 great care and view it with special caution.

5 You may consider the fact that a witness is
6 cooperating as bearing upon that witness' credibility. It does
7 not follow, however, that simply because a person has admitted
8 to participating in one or more crimes that he or she is
9 incapable of giving truthful testimony. You should ask
10 yourselves whether the witness would benefit more from lying or
11 by telling the truth. If you find that testimony was false,
12 you should reject it. However, if after careful examination of
13 a cooperating witness' testimony and demeanor on the witness
14 stand you are satisfied that the witness told the truth, you
15 should accept it as credible and act upon it accordingly.

16 As with any witness, if you find that the cooperating
17 witness has testified falsely in one part, you may still accept
18 their testimony in other parts as true. Or you may disregard
19 it all. That determination is left entirely up to you. Like
20 the testimony of any other witness, a cooperating witness'
21 testimony should be given such weight as it deserves in light
22 of all the facts and circumstances.

23 You may also consider a witness' relationship to or
24 interest in the outcome of the controversy. An interested
25 witness is not necessarily less credible than a disinterested

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Charge

1 witness. The fact that a witness is interested in the outcome
2 does not mean that he or she has not told the truth or is not
3 capable of telling the truth. It is for you to determine from
4 the witness' demeanor on the stand and such other tests that
5 your experience dictates whether or not their testimony has
6 been colored, intentionally or unintentionally, by interest.

7 Now the defendants, Gulay Cibik, Refeal Brodjik,
8 Nathan Schwartz, and Harold Tischler, did not testify in this
9 case. Under our Constitution, a defendant in a criminal case
10 has no obligation to testify or to come forward with any
11 evidence. This is because, as I've told you, the burden of
12 proof beyond a reasonable doubt remains on the government at
13 all times. A defendant is presumed innocent and has no duty to
14 prove that he or she is innocent.

15 You may not attach any significance to the fact that
16 the defendants did not testify. You may not draw any adverse
17 inference against the defendants because they did not take the
18 witness stand, and you may not consider this fact in any way in
19 your deliberations in the jury room.

20 Additionally, the fact that the prosecution is brought
21 in the name of the United States of America entitles the
22 government to no greater or no less consideration than that
23 accorded to any other party to a litigation. All parties,
24 whether the government or individuals, stand as equals under
25 the law.

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Charge

1 You have heard the testimony of individuals employed
2 by certain government agencies. The fact that a witness may be
3 employed by the government does not mean that his or her
4 testimony is necessarily deserving of more or less
5 consideration or greater or lesser weight than that of an
6 ordinary witness. At the same time, it is quite legitimate for
7 defense counsel to try to attack the credibility of witnesses
8 employed by the government on the grounds that their testimony
9 may be colored by personal or professional interest in the
10 outcome of the case. It is your decision, after reviewing all
11 the evidence, whether to accept the testimony of those
12 witnesses and to give that testimony whatever weight, if any,
13 you find it deserves.

14 You have heard evidence during the trial that
15 witnesses have discussed the facts of the case and their
16 testimony with the lawyers before those witnesses appeared in
17 court.

18 Although you may consider that fact when you are
19 evaluating a witness' credibility, there is nothing unusual or
20 improper about a witness meeting with lawyers before testifying
21 so that the witness can be aware of and focus on the subjects
22 he will be questioned about and have the opportunity to review
23 relevant exhibits before being questioned about them. Such
24 consultation helps to conserve your time and the court's time.
25 In fact, it would be unusual for a lawyer to call a witness

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Charge

1 without such consultation.

2 Again, the weight you give to the fact or the nature
3 of the witness' preparation for his or her testimony and what
4 inference you draw from such preparation are matters completely
5 within your discretion.

6 You have heard testimony from witnesses who have given
7 their opinion that defendant Harold Tischler has a reputation
8 for being trusting in the community where they live. That
9 testimony bears on a defendant's character. It is not to be
10 taken by you as the witness' opinion as to whether a defendant
11 is guilty or not guilty. Character testimony should be
12 considered together with all the other facts and all the other
13 evidence in the case when determining whether a defendant is
14 guilty or innocent of the charges.

15 Your verdict must be based solely on the evidence
16 developed at trial or the lack of evidence. In reaching your
17 decision as to whether the government sustained its burden of
18 proof, it would be improper for you to consider any personal
19 feelings -- positive or negative -- you may have about the
20 race, religion, national origin, sex, or age of any of the
21 witnesses or the defendants in this case. The parties in this
22 case are entitled to a trial free from prejudice, and our
23 judicial system cannot work unless you reach your verdict
24 through a fair and impartial consideration of the evidence.

25 As you know, the defendants are formally charged in an

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Charge

1 indictment. As I instructed you at the outset of the case, the
2 indictment is a charge or accusation. It is not evidence, and
3 it is not to be considered by you as any evidence of the guilt
4 of the defendants.

5 As I mentioned earlier, the indictment in this case
6 contains six counts. I now want to give you an overview of
7 these counts and also explain how I will present them to you.

8 Count One of the indictment charges each of the four
9 defendants with participating in a criminal conspiracy.
10 Specifically, it alleges that the objectives of the conspiracy
11 were (i) to commit visa fraud by making false statements in
12 documents required by the U.S. immigration laws and presenting
13 documents containing such false statements, and (ii) to make
14 false statements to the United States government. As I will
15 explain in more detail in a few moments, conspiracy, such as
16 the one charged in Count One, is a criminal agreement to
17 violate the law.

18 Counts Two, Three, Five, and Six of the indictment
19 charge each of the four defendants separately with the crime of
20 visa fraud. These counts allege what is called a substantive
21 crime. Unlike the conspiracy charge in Count One, which is a
22 charge of agreeing to commit certain offenses, the substantive
23 charges in Counts Two, Three, Five, and Six allege the actual
24 commission of a substantive offense.

25 (Continued on next page)

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Charge

1 Count two of the indictment charges Gulay Cibik with the
2 commission of visa fraud.

3 Count three of the indictment charges defendant Rafael
4 Brodjik with the commission of visa fraud.

5 Count five of the indictment charges Defendant Nathan
6 Schwartz with the commission of visa fraud.

7 And count six of the indictment charges Harold
8 Tischler with the commission of visa fraud.

9 Count four charges defendant Rafael Brodjik with the
10 substantive crime of making false statements in connection with
11 his own naturalization proceeding.

12 Now, count one, charges each of the defendants, Gulay
13 Cibik, Refael Brodjik, Nathan Schwartz and Harold Tischler with
14 the crime of conspiracy to commit visa fraud and to make false
15 statements to the United States government.

16 The jurors are now requested to please read count one
17 of the indictment to themselves.

18 Count one goes from page 1 to page 11.

19 Let me just say one thing, I just noticed something
20 that is in the written charge is incomplete. You'll see when
21 you get to the description of count one, in the written charge,
22 that it only recites what we might call the statutory
23 allegations. It doesn't have any of the background material
24 that you have. So in every case, when you're focusing on what
25 the indictment actually says, use the indictment, don't use the

D240cib4

Charge

1 charge version, because it's shorter. It's just not complete.
2 Okay? And that's also true for some of the later charges which
3 left out a sentence.

4 Anyway, a conspiracy is a kind of criminal
5 partnership. An agreement with two or more persons to join
6 together to accomplish some unlawful purpose.

7 The crime of conspiracy or agreement to violate a
8 federal law as charged in this indictment is an independent
9 offense. It is separate and distinct from the actual violation
10 of any specific federal laws, which the law refers to as
11 substantive crimes.

12 Indeed, you may find one or more of the defendants
13 guilty of the crime of conspiracy to commit visa fraud, and to
14 make false statements, even if you find that the substantive
15 offenses of visa fraud and making false statements were never
16 actually committed. Congress has deemed it appropriate to make
17 conspiracy, standing alone, a separate crime, even if the
18 conspiracy is not successful.

19 By the same token you can find one or more of the
20 defendants guilty of the substantive crime of committing visa
21 fraud, even if you find them not guilty of the conspiracy to
22 commit visa fraud charged in count one.

23 I will now instruct you on the elements of count one.

24 In order to sustain its burden of proof with respect
25 to the conspiracy charged in count one, the government must

D240cib4

Charge

1 prove the following three elements beyond a reasonable doubt:

2 First, the existence of the conspiracy charged in the
3 indictment; that is, that two or more persons formed an
4 agreement or an understanding to violate the laws of the United
5 States which make it illegal to commit visa fraud, and to make
6 false statements to the United States government.

7 Second, that the defendant knowingly and willfully
8 became a member of the conspiracy; that is, that they knowingly
9 and willfully associated themselves with, and participated in,
10 the alleged conspiracy to commit visa fraud, and to make false
11 statements to the government; and third, that any one of the
12 co-conspirators, not necessarily one of the defendants of any
13 of the individuals alleged to be a member of the conspiracy
14 knowingly committed at least one overt act in the Southern
15 District of New York in furtherance of some object of the
16 conspiracy during the life of the conspiracy.

17 First you must determine whether the evidence proves
18 beyond a reasonable doubt the existence of the conspiracy
19 charged in the indictment. To establish this first element,
20 the government is not required to show that members of the
21 conspiracy met together and entered into any express or formal
22 agreement, or that the alleged conspirator stated, either in
23 words or in writing what the scheme was, its object or purpose,
24 its precise details, or the means by which its object or
25 purpose was to be accomplished. Your common sense will tell

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Charge

1 you that when people in fact agree to enter into a criminal
2 conspiracy, much is left to unexpressed understanding.

3 From its very nature, conspiracy is usually secret.
4 Even if actions are taken in the open, the purpose behind those
5 actions is often known only to the conspirators.

6 Thus, to establish the existence of a conspiracy, it
7 is sufficient if the government proves that there was a mutual
8 understanding, either spoken or unspoken between two or more
9 people to cooperate with each other to violate the law and
10 accomplish at least one of the objectives of the conspiracy
11 charged in the indictment.

12 If you find beyond a reasonable doubt that two or more
13 alleged conspirators came to such an understanding through any
14 contrivance, express or applied, then the government will have
15 sustained its burden of proof as to this element.

16 When people enter a conspiracy to accomplish an
17 unlawful end, they become agents or partners of one another in
18 carrying out the conspiracy. To determine whether there has
19 been an unlawful agreement that is alleged, you may consider
20 the acts and conduct of the alleged conspirators that were done
21 to carry out the apparent criminal purpose. Often, the only
22 evidence that is available with respect to the existence of a
23 conspiracy, is that of disconnected acts and conduct on the
24 part of the alleged individual conspirators. When taken all
25 together and considered as a whole, however, those acts of

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Charge

1 conduct may warrant the inference that a conspiracy existed as
2 conclusively as would direct proof. On this question you
3 should refer back to my earlier instructions on direct and
4 circumstantial evidence and inferences.

5 In sum, if upon consideration of all of the evidence
6 direct or circumstantial, you find beyond a reasonable doubt
7 that at least two of the alleged conspirators agreed to work
8 together in furtherance of the unlawful scheme alleged in the
9 indictment, then the first element of conspiracy is
10 established.

11 Now, the objects of conspiracy are the illegal goals
12 the conspirators agree to or plan to achieve. As I have
13 already mentioned, the indictment here charges the conspiracy
14 alleged in count one had two objects: First, that the
15 defendants here on trial, and others, agreed to commit visa
16 fraud by making false statements in documents required by the
17 immigration laws and by presenting documents that contain such
18 false statements; and second, that the defendants and others
19 agreed to make statements to the federal government.

20 If the government fails to prove that at least one of
21 the objects of the conspiracy was an object of the conspiracy
22 in which a defendant participated, you must find that defendant
23 not guilty as to count one.

24 However, if you find that the charged conspiracy
25 existed, and that it had at least one of the charged

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Charge

1 objectives, the illegal purpose element will be satisfied. You
2 need not find that the conspiracy had both objectives alleged
3 in the indictment.

4 I will now instruct you as to the elements of each of
5 the alleged objects of the conspiracy charged in count one.
6 Again, I remind you that the government need only prove that
7 the conspirators agreed to achieve one or more of these
8 objects.

9 There are four elements of the offense of visa fraud.
10 The first alleged object of the charged conspiracy.

11 The first element that government must prove beyond a
12 reasonable doubt, is that the conspirators agreed to make a
13 false statement. The government can satisfy this element in
14 one of two ways. First, the government can prove that two or
15 more conspirators agreed to make a false statement under oath;
16 second, that the government can prove that two or more
17 conspirators agreed to present a false statement made by
18 another, whether or not the false statement was made under
19 oath.

20 In this regard, the government need not prove that the
21 conspirators agreed to physically make or otherwise personally
22 prepare the false statement in question. It is sufficient if
23 the conspirators agreed to cause the statement to be made or
24 used.

25 A statement is false, if it was untrue when made.

D240cib4

Charge

1 A statement is made under oath, if the maker of the
2 statement took an oath, testified truly before the United
3 States Citizenship and Immigration Services, or the maker of
4 the statement, under penalty of perjury, subscribed as true,
5 written information that was submitted to the United States
6 Citizenship and Immigration Services.

7 The second element which the government must prove
8 beyond a reasonable doubt is that two or more conspirators
9 agreed to make the statement described in element one in an
10 application, affidavit, or other document required under the
11 United States immigration laws. However, it is not required
12 that the statement be made in an official form of the United
13 States Citizenship and Immigration Services. It is sufficient
14 if the false statement was to be included in any affidavit or
15 other document required to be attached to an application,
16 affidavit, or other document required under the immigration
17 laws.

18 In this regard, I instruct you as a matter of law that
19 an application for an alien labor certification, and a petition
20 to adjust an alien's immigration status, including attachment
21 and documents submitted by the applicant in support of such
22 allegations, are required by United States immigration laws and
23 regulations.

24 The third element which the government must prove
25 beyond a reasonable doubt, is that the statement described in

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Charge

1 element one was related to a fact that was material. A fact is
2 material if it could have influenced the government's decisions
3 for activities. However proof of the government's actual
4 reliance on the statement is not required.

5 The fourth element which the government must prove
6 beyond a reasonable doubt is that the defendant knew that the
7 statement was false when made.

8 To act knowingly means to act voluntarily and
9 deliberately, rather than mistakenly or inadvertently.

10 There are five elements of the offense of making false
11 statements to the United States government, the second alleged
12 object of the charged conspiracy.

13 The first element requires that the government prove
14 beyond a reasonable doubt that two or more conspirators, one,
15 agreed to make a statement or a presentation; or two, agreed to
16 use a writing or document. In this regard the government need
17 not prove that the conspirators agreed to physically make or
18 otherwise personally prepare the statement, writing, or
19 document in question. It is sufficient if the conspirators
20 agreed to cause the statement or representation or writing or
21 document to be made or used. Under the false statements
22 statute there is no distinction between written and oral
23 statements.

24 The second element requires that the government prove
25 beyond a reasonable doubt that the statement described in

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Charge

1 element one is material. You may refer to my earlier
2 instruction on materiality.

3 The third element that the government must prove
4 beyond a reasonable doubt is that the statement described in
5 element one was false, fictitious, or fraudulent. A statement
6 or representation is false or fictitious if it was untrue when
7 made and known at the time to be untrue by the person making
8 it, or causing it to be made.

9 A statement or representation is fraudulent if it was
10 untrue when made, and was made or caused to be made, with the
11 intent to deceive the government agency to which it was
12 submitted.

13 If the governmental agency's question request in
14 response to which the statement or representation was ambiguous
15 so that it reasonably could have been interpreted in several
16 ways, then the government must prove that the defendant's
17 answer was false, under any reasonable interpretation of the
18 question.

19 The fourth element that the government must prove
20 beyond a reasonable doubt, is that the statement described in
21 element one concerned a matter within the jurisdiction of the
22 United States government. I charge you that the United States
23 Customs and Immigration Services is a part of the Executive
24 Branch of the government and is a department of the United
25 States government.

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Charge

1 I also charge you that the Department of Labor is a
2 part of the Executive Branch of the government, and is a
3 Department of the United States government.

4 There is no requirement that the conspirators must
5 have contemplated that the statement be actually directed or
6 given to the United States Customs and Immigration Services or
7 the Department of Labor. It is sufficient if you find that
8 they contemplated that the document would be utilized in a
9 manner which was within the jurisdiction of the United States
10 Customs and Immigration Services or the Department of Labor, or
11 which concerned an authorized function of those two agencies.

12 If you find that the government has established
13 elements one, two, three and four, the fifth and final element
14 that the government must prove beyond a reasonable doubt is
15 that the statement described in element one was made
16 knowingly, willfully, and with a specific intent to make a
17 false statement to the United States government.

18 You may refer to my earlier instructions on the
19 definition of knowingly here.

20 To act willfully means to act knowingly and
21 purposefully with the intent to do something the law forbids;
22 that is to say with a bad purpose to disobey or to disregard
23 the law.

24 Keep in mind that direct proof of knowledge,
25 willfulness, and fraudulent intent is not required because such

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Charge

1 proof of a person's state of mind is almost never available.
2 It would be a rare case where it could be shown that a person
3 wrote or stated that as of a given time in the past he
4 committed an act with fraudulent intent. The question of
5 whether a person acted knowingly, willfully, and with intent to
6 defraud is for you to determine in light of all of the
7 evidence, like any other issue of fact.

8 I have instructed you on the elements of each of the
9 two alleged objects of the conspiracy. In considering these
10 two alleged objects, you should keep in mind that you need not
11 find that the conspirators agreed to accomplish both of these
12 objects.

13 Instead, you need only find that there was an
14 agreement to accomplish either one of these objects. However,
15 you must all agree on the specific object that the conspirators
16 agreed to try to accomplish as the goal of their criminal
17 conspiracy. In other words, the government must prove that the
18 intended unlawful conduct of which the conspirators agreed
19 included all of the elements of the objects as I have just
20 described them to you. If you find that two or more persons
21 agreed to accomplish at least one of the objects charged in the
22 indictment, the illegal purpose element will be satisfied,
23 regardless of whether or not that object was in fact
24 accomplished. However, if the government fails to prove beyond
25 a reasonable doubt that at least one of the two objects was in

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Charge

1 fact an agreed-upon object of the conspiracy, then you must
2 find the defendants not guilty on count one.

3 We now turn to the second element that the government
4 must prove to establish the offense of conspiracy, which is
5 whether each defendant was in fact a member of the charged
6 conspiracy. If you conclude that the government has proven
7 beyond a reasonable doubt that the conspiracy charged in
8 count one existed, you must next determine whether the
9 government has proven beyond a reasonable doubt that the
10 particular defendant you are considering knowingly, willfully
11 and voluntarily joined the charged conspiracy with the criminal
12 intent to further its specific unlawful objective; that is,
13 with a purpose to violate the law. You must ask yourselves,
14 did the defendant you are considering participate in the
15 conspiracy with knowledge of its unlawful purpose, and with the
16 intent to commit the substantive offense of visa fraud, or
17 making false statements to the United States government, or
18 both, that you find to have been the objective of the
19 conspiracy.

20 I have previously defined the terms knowingly and
21 willfully for you, and I instruct you to consider those
22 definitions here.

23 Unlawfully simply means contrary to law. In order to
24 prove that the defendant acted unlawfully, the government need
25 not prove that the defendant knew that he or she was breaking

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Charge

1 any particular law or any particular rule. The government must
2 only show that the defendant was aware of the generally
3 unlawful nature of his or her acts.

4 The indictment alleges that all four defendants were
5 part of the same conspiracy; that is the conspiracy charged in
6 count one. However, to conclude that a particular defendant
7 joined the conspiracy, you need only find that the defendant
8 conspired with one other person who need not be another
9 defendant in this case.

10 Furthermore, the duration and extent of the
11 defendant's participation in the alleged conspiracy has no
12 bearing on the issue of that defendant's guilt. A defendant
13 need not have joined the conspiracy at its outset. To be a
14 member of the conspiracy, a defendant may have joined it at any
15 time; at the beginning, in the middle, or at the end.

16 It is important for you to note that the defendant's
17 participation in the conspiracy must be established by
18 independent evidence of his own acts or statements. However,
19 you may consider the defendant's acts and statements in the
20 context of the acts and statements of the other alleged
21 conspirators, and reasonable inferences which may be drawn
22 therefrom.

23 A defendant's knowledge is a matter of inference from
24 the facts proved. In that connection, I instruct you that to
25 become a member of the conspiracy, a defendant need not have

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Charge

1 known the identities of each and every other member, nor need
2 he or she have been apprised of all of the activities.

3 Moreover, a defendant need not have been fully informed as to
4 all of the details or the scope of the conspiracy in order to
5 justify an inference of knowledge on his or her part.

6 Furthermore a defendant need not have joined in all of the
7 conspiracy's unlawful objectives to be a member of the
8 conspiracy.

9 I want to caution you, however, that the defendant's
10 mere association with one or more members of the conspiracy
11 does not, in and of itself, make that defendant a member of the
12 conspiracy. A person they know, or may be friendly with, or
13 may be related to a criminal, without being a criminal himself.

14 I also want to caution you that mere knowledge of, or
15 acquiescence in the unlawful plan, without participation in it,
16 is not sufficient. Moreover, the fact that a defendant's act
17 merely happened to further the purposes or objectives of the
18 conspiracy, without more, does not make that defendant a
19 member. The defendant must have participated in the conspiracy
20 with knowledge of its unlawful objective and with the intention
21 of aiding in the accomplishment of that objective.

22 In that regard, it has been said that in order for a
23 defendant to be deemed a participant in a conspiracy, he or she
24 must have had a stake in the venture or its out come. I
25 instruct you that while proof of a defendant's financial

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Charge

1 interest in the outcome of the scheme is not essential, if you
2 find that any defendant had such an interest, that is one
3 factor which you may properly consider in determining whether
4 or not the defendant was a member of the conspiracy charged in
5 count one of the indictment.

6 If you determine that the defendant became a member of
7 the conspiracy, the extent of his or her participation in that
8 conspiracy has no bearing on the issue of his or her guilt.
9 The conspirator's liability is not measured by the extent or
10 duration of that conspirator's participation. Indeed, each
11 member may perform separate and distinct acts, and may perform
12 them at different times. Some conspirators play major roles,
13 while others play minor roles in the scheme. An equal role is
14 not what the law requires. In fact, even a single act may be
15 sufficient to draw the defendant within the ambit of the
16 conspiracy.

17 In sum, the defendant you are considering, with an
18 understanding of the unlawful character of the conspiracy
19 charged in the indictment, must have intentionally engaged,
20 advised, or participated in it for the purpose of furthering
21 its illegal objective. He or she thereby becomes a knowing and
22 willing participant in the unlawful agreement; that is to say a
23 conspirator.

24 The third element which the government must prove
25 beyond a reasonable doubt to establish the offense of

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Charge

1 conspiracy, is that at least one of the conspirators committed
2 at least one overt act in the Southern District of New York in
3 furtherance of the conspiracy charged in count one of the
4 indictment.

5 The Southern District of New York encompasses the
6 Manhattan, the Bronx, Westchester, Rockland, Putnam, Dutchess
7 and Orange and Sullivan counties. Therefore, anything that
8 occurs in those counties, occurs in the Southern District of
9 New York.

10 In order for government to prove that the crime of
11 conspiracy was committed, there must have been something more
12 than an agreement, some overt step or action must have been
13 taken in furtherance of that agreement. In other words, the
14 overt act is a requirement that the agreement went beyond the
15 mere talking stage, the mere agreement stage.

16 The jurors are requested to read the overt acts
17 charged in count one of the indictment to themselves.

18 Okay, those -- you may have read them already. Did
19 you? Yes? Okay then we'll move on.

20 In order for the government to satisfy the overt act
21 element, it is not required to prove that any of the defendants
22 charged in this case committed any of the overt acts alleged.
23 It is sufficient for the government to show that any one of the
24 alleged co-conspirators knowingly committed an overt act in
25 furtherance of the conspiracy. Similarly, it is not necessary

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Charge

1 for the government to prove that each member of the conspiracy
2 committed or participated in an overt act. However, you must
3 all agree that A conspirator committed at least one specific
4 overt act. In other words, it is not sufficient for you to
5 agree that some overt act was committed without agreeing on
6 which overt act was committed.

7 Moreover, the government need not prove that an overt
8 act specifically alleged in the indictment was committed. To
9 satisfy this element, you must find that one or more specific
10 overt acts were committed that are not alleged in count one of
11 the indictment, nor is it necessary -- I'm sorry, let me start
12 that again. Let me just start the paragraph.

13 Moreover, the government need not prove that an overt
14 act specifically alleged in the indictment was committed. To
15 satisfy this element, you may find that one or more specific
16 overt acts were committed that are not alleged in count one of
17 the indictment. Nor is it necessary for the overt act to have
18 been committed at precisely the time alleged in the indictment,
19 so long as you are convinced, beyond a reasonable doubt, that
20 it occurred at or about the time and place stated, and that it
21 occurred during the life of the conspiracy.

22 Finally, you should bear in mind that the overt act,
23 standing alone, may be an innocent, lawful act. Frequently an
24 apparently innocent act sheds it harmless character if it is a
25 step in carrying out, promoting, aiding, or assisting the

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Charge

1 conspiratorial scheme. You are, therefore, instructed that the
2 overt act does not have to be an act which, in and of itself,
3 is criminal or constitutes an objective of the conspiracy.

4 The indictment states that the conspiracy existed from
5 at least in or about 1996, up to and including in or about
6 2011. It is not necessary for the government to prove that the
7 conspiracy started and ended within this exact time period. It
8 is sufficient if you find that the conspiracy was formed, and
9 that it existed for some time within the period set forth in
10 the indictment. And that at least one overt act was committed
11 in furtherance of the conspiracy during approximately that
12 time.

13 Now, I have instructed you that in order to sustain
14 its burden of proof, the government is required to prove that
15 each defendant acted knowingly. In determining whether the
16 defendant you are considering acted knowingly, you may consider
17 whether the defendant deliberately closed his or her eyes to
18 what otherwise would have been obvious to him or her. The law
19 calls think conscious avoidance. If you find beyond a
20 reasonable doubt that the defendant acted with, or that the
21 defendant's ignorance was solely and entirely the result of a
22 conscious purpose to avoid learning the truth, then that
23 defendant has acted knowingly.

24 Now, I want to be very clear about what this means,
25 and does not mean, with respect to the conspiracy alleged in

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Charge

1 count one of the indictment.

2 First, conscious avoidance cannot be used as a basis
3 for finding that the defendant you are considering knowingly
4 joined the conspiracy. It is impossible for a defendant to
5 join a conspiracy unless he or she actually knows the fact that
6 the conspiracy exists. However, if you find beyond a
7 reasonable doubt that the defendant chose to participate in the
8 joint undertaking, you may then consider whether the defendant
9 deliberately avoided confirming that the purpose of the
10 partnership he or she joined was to commit immigration fraud
11 and/or submit false statements to government. If you find that
12 the defendant you are considering was aware that there was a
13 high probability that his or her co-conspirators objective was
14 to commit immigration fraud and/or submit false statements to
15 the government, but that the defendant deliberately avoided
16 confirming this fact, you may treat this deliberate avoidance
17 of positive knowledge as the equivalent of knowledge of the
18 objects of the charged conspiracy. However, if you find that
19 the defendant actually believed that he or she and other
20 members of the conspiracy were acting in a lawful manner, that
21 defendant may not be convicted of the charge in count one.

22 It is important to understand that conscious avoidance
23 may not be established by demonstrating that the defendant was
24 merely careless, negligent, foolish, or mistaken. If a
25 defendant actually believed that the conspiracy was about

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Charge

1 something else entirely, or if a defendant was merely careless,
2 or even reckless about the risk that he or she was wrong, then
3 you cannot find that defendant guilty. Conscious avoidance can
4 only be established if a defendant deliberately decided not to
5 confirm a key fact when it was obvious or highly probable that
6 the fact was true.

7 You will recall that I have admitted into evidence the
8 acts and statements of other individuals who did not appear as
9 witnesses at trial. Because the government argues that the
10 persons who committed such acts or statements were confederates
11 or co-conspirators of the defendants on trial -- let me start
12 that over, I got the wrong emphasis.

13 You will recall that I have admitted into evidence the
14 acts and statements of other individuals who did not appear as
15 witnesses at trial, because the government argues that the
16 persons who committed such acts or statements were confederates
17 or co-conspirators of the defendants on trial.

18 The reason for the admitting this evidence has to do
19 with the nature of the crime of conspiracy. Under the law,
20 when people knowingly enter into a conspiracy to accomplish an
21 unlawful end, each and every member becomes an agent for the
22 other conspirators in carrying out the conspiracy.

23 Therefore, any reasonably foreseeable act or statement
24 of a member of the conspiracy, committed or made in furtherance
25 of the conspiracy, is deemed to be the act or statement of all

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Charge

1 of the members, and all of the members are responsible for it.

2 If you find beyond a reasonable doubt that one or more
3 of the defendants was a member of the conspiracy charged in
4 count one of the indictment, then any acts committed, or
5 statements made in furtherance of the conspiracy by a member of
6 the same conspiracy, may be considered against that defendant.
7 This is so even if such acts were committed or such statements
8 were made in the defendant's absence and without his or her
9 knowledge.

10 However, before you may consider the acts or
11 statements of a co-conspirator in deciding the guilt of the
12 defendant, you must first determine that the acts or statements
13 occurred during the existence of the unlawful scheme.
14 Furthermore, if you do not find the person who committed the
15 act or made the statement to have been a member of the
16 conspiracy, or if the act or statement in question did not
17 further the conspiracy, you may not consider that in deciding
18 whether a defendant is guilty or not guilty.

19 Now, counts two, three, five, and six charged the
20 defendants, respectively, Gulay Cibik, Rafael Brodjik, Nathan
21 Schwartz and Harold Tischler, with committing visa fraud by
22 making false statements in documents required by the United
23 States immigration laws, and by presenting documents containing
24 false statements, and with aiding and abetting the same.

25 We now ask the jurors please to read counts two,

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Charge

1 three, five, and six to themselves. And, again, when you are
2 back in the jury room, don't rely on the charge recital. On
3 each of these counts, it leaves out the preceding sentence.

4 (Pause)

5 The indictment charges each of the defendants with the
6 substantive offense of visa fraud, or making false statements
7 in an application or other document required by the United
8 States immigration laws in violation of Title 18 of the United
9 States Code Section 1546.

10 That statute reads in pertinent part at follows:
11 Whoever knowingly makes under oath, or as permitted under
12 penalties of perjury, knowingly subscribes as true any false
13 statement with respect to a material fact in any application,
14 affidavit, or other document required by the immigration laws
15 or regulations subscribed thereunder, or knowingly presents any
16 such application, affidavit, or other document which contains
17 any false statement, or which fails to contain any reasonable
18 basis in law or fact, shall be guilty of a crime.

19 Further, the indictment charges each of the defendants
20 with aiding and abetting the substantive offense of visa fraud
21 in violation of the federal aiding and abetting statute, which
22 is Title 18 United States Code Section 2(a). That section
23 provides as follows: Whoever commits an offense against the
24 United States or aides, and abets, counsels, commands, induces,
25 or procures its commission, is punishable as a principal.

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Charge

1 In order to sustain its burden of proof with respect
2 to the allegation that the defendant made a false statement in
3 an application or document required by the immigration laws,
4 the government must prove beyond a reasonable doubt with
5 respect to each defendants charged, each of the following
6 elements:

7 First, that the defendant either made a false
8 statement under oath, or presented a document containing a
9 false statement; second, that the statement was made in a
10 document required by the United States immigration laws or
11 regulations; third, that the statement was false as to a
12 material fact; and fourth, that the defendant knew that the
13 statement was false when made.

14 You may consult my instructions on the first alleged
15 object of the conspiracy charged in count one for further
16 details as to each of these elements.

17 The government alleges that the defendants made a
18 number of false statements to immigration authorities. The
19 government need not prove that each and every statement it
20 alleges was false was, in fact, false. However, to find any
21 statement false, the government must prove beyond a reasonable
22 doubt, all of the required elements of the substantive offense
23 of visa fraud as to that statement. Accordingly, as you
24 consider counts, two, three, five, and six, in order to find a
25 particular defendant guilty of visa fraud, you must unanimously

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Charge

1 agree that the defendant you considering made at least one
2 false statement, and you must be unanimous as to which false
3 statement that defendant made.

4 When determining whether any defendant acted knowingly
5 with respect to the visa fraud charged against that defendant,
6 you may consider whether that defendant deliberately closed his
7 or her eyes to what otherwise would have been obvious to him or
8 her. You may refer to my earlier instruction on the definition
9 of conscious avoidance here. I remind you that it is entirely
10 up to you whether you find a particular defendant deliberately
11 closed his or her eyes with respect to the substantive offense
12 of visa fraud, and what inference if any is to be drawn from
13 the evidence on this issue.

14 First, as I mentioned earlier, with respect to
15 counts two, three, five, and six, the government also charges
16 each of the defendants with aiding and abetting the substantive
17 offense of visa fraud.

18 Under the aiding and abetting statute, it is not
19 necessary for the government to show that the defendant
20 physically committed a crime in order for you to find that
21 defendant guilty of that crime. A person who aides and abets
22 another to commit an offense is just as guilty of that offense
23 as if he committed it himself. Accordingly, you may find a
24 defendant guilty of the substantive crime of visa fraud. If
25 you find that the government has proven beyond a reasonable

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Charge

1 doubt that another person actually committed the crime and that
2 the defendant aided and abetted that person in the commission
3 of the offense. Obviously, no one can be convicted of aiding
4 and abetting the criminal act of another if no crime was
5 committed by the other person in the first place. But if you
6 do find that a crime was committed, then you must consider
7 whether each of the defendants aided or abetted the commission
8 of that crime.

9 In order to aid or abet another to commit a crime, it
10 is necessary that a defendant willfully and knowingly associate
11 himself or herself with the crime, and that he or she willfully
12 and knowingly seeks, by some act, to help make the crime
13 succeed.

14 Participation in a crime is willful if action is taken
15 voluntarily and intentionally; that is to say, with a bad
16 purpose, either to disobey or disregard the law.

17 You may refer to my earlier instruction on the meaning
18 of have knowingly here.

19 The mere presence of a defendant when a crime is being
20 committed, even coupled with knowledge by that defendant that a
21 crime is being committed, or the mere acquiescence by a
22 defendant in a criminal conduct of others, even with guilty
23 knowledge, is not sufficient to establish aiding and abetting.
24 An aider and abetter must know that a crime is being committed
25 and act in a way that is intended to bring about the success of

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Charge

1 the criminal venture.

2 To determine whether any defendant aided or abetted
3 the commission of the crime with which he or she was charged,
4 ask yourself whether the defendant participated in the crime
5 charged as something he or she wished to bring about,
6 associated himself or herself with a criminal venture knowingly
7 and willfully, and sought by his or her actions to make the
8 criminal venture succeed.

9 If the defendant did, then he or she is an aider and
10 abetter and, therefore, guilty of the offense of visa fraud.

11 If, on the other hand, your answer to any one of those
12 questions is no, then the defendant is not an aider and
13 abetter, and you may not find him -- or her -- and you must
14 find him or her not guilty.

15 Okay. Now, turning to count four. Count four of the
16 indictment charges the defendant, Rafael Brodjik with making a
17 false statement in a naturalization proceeding in his own
18 behalf.

19 At this time, I would request the jurors read
20 count four to themselves.

21 (Pause)

22 Now the indictment in count four charges the defendant
23 Rafael Brodjik with making false statements in an application
24 for a naturalization petition in violation of Section 1015(a)
25 of Title 18 of the United States Code. That section provides

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Charge

1 in pertinent part: Whoever knowingly makes a false statement
2 under oath in any case, proceeding, or matter relating to, or
3 under, or by virtue of any law of the United States relating to
4 naturalization, citizenship, or registered aliens, shall be
5 guilty of a crime. In order to establish that the defendant,
6 Rafael Brodjik, is guilty of making a false statement in a
7 naturalization proceeding, the government must prove each of
8 the following four elements beyond a reasonable doubt: First,
9 that the defendant made a false statement as alleged in the
10 indictment; second, that the statement was made during the
11 naturalization proceeding in a document required by the U.S.
12 immigration laws and regulations; third, that the statement was
13 made under oath; and fourth, that the defendant knew that the
14 statement was false when made.

15 The first element the government must prove beyond a
16 reasonable doubt is that the defendant, Rafael Brodjik, made a
17 false statement as alleged in count four of the indictment. As
18 I previously instructed you, a statement is false if it was
19 untrue when made. As I instructed you earlier, in order to
20 find the defendant guilty, you must unanimously agree that the
21 defendant made at least one false statement, and you must be
22 unanimous as to which false statement or statements defendant
23 made.

24 You may not consider any alleged false statements
25 other than those the government enumerated in its summation

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Charge

1 with respect to count four. You should not speculate as to any
2 other possible misstatements based on the evidence you have
3 heard throughout the course of the trial.

4 The second element that the government must prove
5 beyond a reasonable doubt is that the statement described in
6 element one was made during the naturalization proceeding in a
7 document required by the U.S. immigration laws or regulations.

8 To satisfy the element, the government must prove that
9 the statement was made to the Bureau of Citizenship and
10 Immigration Services in a proceeding concerning the defendant's
11 attempt to obtain United States citizenship or in a written
12 form required as part of that proceeding. It is sufficient if
13 the false statement was included in any affidavit, attachment,
14 or other document required to be attached to an application.

15 The third element that the government must prove
16 beyond a reasonable doubt is that the statement described in
17 element one was made under oath. To satisfy this element, the
18 government must prove that the defendant, Rafael Brodjik, took
19 an oath to testify truthfully before the Bureau of Citizenship
20 and Immigration Services, or that the defendant under penalty
21 of perjury, subscribed as true, written information submitted
22 to the United States Citizenship and Immigration Services. The
23 fourth and final element that the government must prove beyond
24 a reasonable doubt, is that the defendant knew that the
25 statement was false when made. To act knowingly means to act

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Charge

1 voluntarily and deliberately, and not because of ignorance,
2 mistake, act, or carelessness.

3 Now in addition to dealing with the elements of each
4 of the charged offenses, you must also consider the issue of
5 venue as to each defense, namely whether any act in furtherance
6 of each crime occurred within the Southern District of New
7 York. As I told you before, the Southern District of New York
8 encompasses Manhattan, the Bronx, Westchester, Rockland,
9 Dutchess, Putnam, Orange, and Sullivan County. So anything
10 that occurs in those counties occurs in the Southern District
11 of New York. In this regard, the government need not prove
12 that the crime itself was committed in this district, or that
13 the defendant or defendants were present here. It is
14 sufficient to satisfy this element if any act in furtherance of
15 the crime you are considering occurred within this district.
16 Moreover, the act need not be a criminal act. The act need not
17 be taken by any defendant or a co-conspirator as long as the
18 act is caused by the conduct of the defendant, or
19 co-conspirator, or is reasonably foreseeable.

20 I note that on this issue, and this issue alone, the
21 government need not offer proof beyond a reasonable doubt. It
22 is sufficient if the government proves venue by mere
23 preponderance of the evidence. A preponderance of the evidence
24 means to prove that the fact was more likely true than not
25 true.

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Charge

1 THE COURT: Thus the government has satisfied its
2 venue obligations if you conclude that it is more likely than
3 not that any act in furtherance of the crimes you are
4 considering occurred within the Southern District of New York.
5 If you find that the government has failed to prove this venue
6 requirement as to any count, then you must acquit the defendant
7 or defendants charged on that count.

8 The indictment alleges certain acts occurred on or
9 about various dates. It does not matter if the indictment
10 charges that a specific act occurred on or about a certain date
11 and the evidence indicates that, in fact, the act occurred on a
12 different date. The law requires only a substantial similarity
13 between the dates alleged in the indictment and the dates
14 established by the evidence. It is for you to determine
15 whether any such difference is material, and if you find that
16 it was material, then you must find that defendant not guilty.

17 Each juror -- these are my final instructions. We're
18 almost at the end.

19 Each juror is entitled to his or her opinion. Each
20 should, however, exchange views with his or her fellow jurors.
21 That is the very purpose of jury deliberations -- to discuss
22 and consider the evidence; to listen to the arguments of fellow
23 jurors; to present your individual views; to consult with one
24 another; and to reach an agreement based solely and wholly on
25 the evidence -- if you can do so without violence to your own

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Charge

1 individual judgment.

2 Each of you must decide the case for yourself, after
3 consideration, with your fellow jurors, of the evidence in the
4 case. But you should not hesitate to change an opinion which,
5 after discussion with your fellow jurors, appears erroneous.

6 However, if, after carefully considering all of the
7 evidence and the arguments of your fellow jurors, you entertain
8 a conscientious view that differs from the others, you are not
9 to yield your conviction simply because you are outnumbered.

10 To report a verdict, it must be unanimous.

11 Your final vote must reflect your conscientious
12 conviction as to how the issues should be decided.

13 I want to say a word about punishment and sentencing.
14 The question of possible punishment of any defendant is of no
15 concern to the jury and should not in any sense enter into or
16 influence your deliberations. The duty of imposing sentence
17 rests exclusively with the court. Your function is to weigh
18 the evidence in the case and to determine whether or not the
19 defendant is guilty beyond a reasonable doubt, solely upon the
20 basis of such evidence. Under your oath as jurors, you cannot
21 allow consideration of the punishment which may be imposed upon
22 the defendant, if convicted, to influence your verdict in any
23 way or in any sense enter into your deliberations.

24 Now that I have charged you as to what the law is,
25 you're about to go into the jury room and begin your

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1 deliberations. I'm going to have the exhibits that have been
2 admitted into evidence brought to you in the jury room. And I
3 just urge you, if you take anything out of the folder, to be
4 sure that you put it back, you know, into the folder. And I
5 also want to tell you that if you want to have any of the
6 testimony read back to you, that can be done, if you send us a
7 note. But please remember that it's not always easy to locate
8 what you might want, so please be as specific as you possibly
9 can in requesting any portions of the testimony you may want.

10 I will also, as I said, give you a copy of the charge
11 on the law for you to use during deliberations. If you feel
12 that you need any of the legal principles clarified during your
13 deliberations, you may write me a note and I will be happy to
14 do so. Again, remember to rely on the indictment itself for a
15 description of its contents rather than on the written charge,
16 just only because the written charge is incomplete. It's not
17 incorrect. It's just incomplete.

18 Your requests for testimony or for any additional
19 instructions on the law -- in fact any communication with the
20 court -- should be made to me in writing, signed by your
21 foreperson, and given to one of the court officers who will be
22 outside the jury room. I will respond to any questions or
23 requests you have as promptly as possible, either in writing or
24 by having you return to the courtroom so I can speak with you
25 in person. In any event, do not tell me or anyone else how the

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Charge

1 jury stands on the issue of each of the defendants' guilt with
2 respect to each count with which he or she is charged until
3 after a unanimous verdict is reached.

4 Earlier you were given a copy of the indictment.
5 Again, you may use it to read the crimes with which the
6 defendants are charged with committing. You are reminded once
7 again that an indictment is merely an accusation and is not to
8 be used by you as any proof of the conduct charged.

9 At this point I want to tell you that juror number 1,
10 Paul Frisch, will serve as the jury's foreperson. But he's not
11 sitting in seat 1. That's because I mixed you guys up
12 purposely. It's a little trick I learned. It keeps you all
13 attentive because none of you know who the alternates are. So
14 anyway, Mr. Frisch, as your foreperson, will be responsible for
15 signing all communications to the court on behalf of the jury
16 and for handing them to the court officer during your
17 deliberations. This should not be understood to mean that an
18 individual cannot send the court a note should the foreperson
19 refuse to do so. After you have reached a verdict, your
20 foreperson will advise the court officer outside your door that
21 you are ready to return to the courtroom.

22 I will stress once again that each of you should be in
23 agreement with the verdict that is announced in court. Once
24 your verdict is announced by the foreperson in open court and
25 officially recorded, it cannot ordinarily be revoked.

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1 The custom and tradition in this court requires,
2 although I know it's totally unnecessary, that I admonish you
3 to be polite and respectful towards each other in the course of
4 your discussions in the jury room so that each juror will have
5 his or her position made clear and so that when you reach a
6 verdict, you will know that it is a just one.

7 Finally, let me remind you that under your oath as
8 jurors, you're not to be swayed by sympathy. Once you let fear
9 or prejudice or bias or sympathy interfere with your thinking,
10 there is a risk that you will not arrive at a just and true
11 verdict. Your oath sums up your duty, and that is: without
12 fear or favor to anyone you will well and truly try the issues
13 between the government and the defendants based solely upon the
14 evidence and this court's instructions as to the law.

15 I assume I don't need to talk to counsel about
16 anything. There is something?

17 MR. GUTMAN: Briefly, about one thing?

18 THE COURT: Okay, yes.

19 (At the sidebar)

20 MR. GUTMAN: Your Honor, I apologize for not noting
21 this before, because I must have made an incorrect assumption,
22 but the language that actually the government added at the end
23 of I believe on page 37 about looking to any reasonable
24 interpretation of the question in determining whether a
25 statement is false, I think is equally applicable to Count

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1 Four, and I mistakenly thought there was a reference back to
2 that but there's not.

3 MS. ECHENBERG: We have no objection to that.

4 THE COURT: What page?

5 MR. GUTMAN: It's 37, on the draft. Of the false
6 statements in the visa fraud count.

7 (Pause)

8 MR. GUTMAN: I have the passage on my computer if it
9 would help.

10 THE COURT: Your computer is not going to solve the
11 problem.

12 (Pause)

13 THE COURT: You want that inserted in element 1? You
14 want it just --

15 MR. GUTMAN: Yes.

16 THE COURT: Okay. So you want it here (indicating) or
17 you want it here (indicating)?

18 MR. GUTMAN: No. I would say here (indicating).

19 THE COURT: Okay. You made copies of this already?

20 THE LAW CLERK: Yes, but I can --

21 THE COURT: Okay.

22 MS. ECHENBERG: Just because we're up here, I noticed
23 that your Honor changed (indicating) --

24 THE COURT: I did.

25 MS. ECHENBERG: Which is correct.

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1 THE COURT: I found it last night.

2 MS. ECHENBERG: So it is corrected in what's going to
3 the jury?

4 THE COURT: It will get corrected.

5 MS. ECHENBERG: Okay.

6 (In open court)

7 THE COURT: Counsel correctly points out that I have
8 the charge in the earlier discussion of false statements which
9 should also be included in connection with Count Four, which is
10 the count concerning Mr. Brodjik and his naturalization
11 application. Let me read what was omitted, and in the written
12 copy of the charge that we'll give you, we'll make sure it's in
13 the right place as well. We've all agreed as to where it
14 should go. And the sentence that appeared earlier that should
15 have also appeared in Count Four is: If the governmental
16 agency's question in response to which the statement or
17 representation was made was ambiguous so that it reasonably
18 could have been interpreted in several ways, then the
19 government must prove that defendant's answer was false under
20 any reasonable interpretation of the question.

21 Okay. I think that takes care of any objection to the
22 charge as delivered. Which gets us to that question of who are
23 the alternates.

24 Look, let me first say, before I tell you who you are,
25 that the alternates are not actually excused. They're not

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1 actually excused from jury duty. They're going to be permitted
2 to leave the building, but we need to keep your contact
3 information, and you still have to follow the rule about not
4 talking about the case, because it can happen that you'll need
5 to be called back in case, for some reason, we, you know, lose
6 a juror -- not permanently, but just for our purposes -- during
7 deliberations.

8 And it's very important -- I forgot once to tell some
9 alternate jurors -- you can't talk to each other about the case
10 either. And the other thing is that we promise that as soon as
11 there is a verdict, we will call you and let you know, because
12 I think it must be totally frustrating to be here for three
13 weeks and now learn that you're an alternate. Two alternates,
14 actually. But I think you know why we needed alternates. You
15 just can't be sure that you're not going to lose people,
16 especially given the fact that the judge got sick.

17 And let me also just take this occasion to thank all
18 of you for your service, and it's true your service isn't over,
19 but we never thank you for your verdict in this court. We only
20 thank you for your service. And that service is the time that
21 you've all taken out of your lives, the attention that you've
22 paid, and it is the way our Constitution works. Some of these
23 instructions concerned elements of our Constitution, and unless
24 we have jurors who are prepared to put their time in and take
25 time out of their regular lives, our constitutional system

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1 can't function. So we appreciate that. And let me thank the
2 alternates, who are Natascha Patterson and Sharon Leibowitz.
3 But remember, you can't talk to each other, and I assume that
4 whatever contact information you gave, that is still good, that
5 we can get you during the day if we need to call you back, and
6 we will, as I say, call you as soon as there is a verdict. And
7 we thank you again. We thank everybody.

8 So at this point, Brett is no longer your -- I don't
9 know how to describe it -- your caretaker. But we have a court
10 officer, court security officer who I think, Brett, you have to
11 swear in.

12 (Court security officer sworn)

13 THE COURT: As I said, go back. Don't start talking
14 to each other as the two alternates, you know, pack up. And
15 you know, if your sandwich is there, take it. And we will
16 bring you copies of the charge, and we just have to make a
17 couple little corrections in it. Okay?

18 (Jury retired to deliberate)

19 THE COURT: All right. So we'll gather up the
20 exhibits and Brett has in her hands some defense exhibits.

21 MR. BRILL: I gave her mine already.

22 MR. GREENFIELD: I have mine here.

23 THE COURT: Okay. Just between you agree that
24 everything is complete, okay?

25 MR. PASTORE: Judge, just a matter for the record. We

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1 have the exhibits in the courtroom. They're in two carts. We
2 personally checked them several times. But they're available
3 if defense counsel wants to, you know, confirm or do anything
4 with them. I don't know if they do want to look through them,
5 but they're here and available.

6 MR. GUTMAN: Is there an official list of the exhibits
7 that have been received in evidence?

8 THE COURT: Yes. Now that you have that piece of
9 information, do you want to do something with it?

10 MR. GUTMAN: I trust it is correct. I just thought it
11 would be helpful.

12 MR. BRILL: Judge, what's your preference in terms
13 of -- assuming you want us in the building.

14 THE COURT: I do.

15 MR. BRILL: So I guess we can go to the cafeteria?

16 THE COURT: Yes. Hopefully we get a little bit of a
17 break. I actually have a preliminary injunction hearing in my
18 other courtroom in less than an hour. It was supposed to be
19 this morning, then I put it off to 2, decided I did need a
20 brief break before I did that.

21 (Recess pending verdict)
22
23
24
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1 THE COURT: All right. I have given you copies of the
2 two notes --

3 MR. DONALDSON: Yes.

4 THE COURT: -- that we received. Let me read them
5 into the record.

6 First note we received at 2:15:

7 Can we get a copy of the complete indictment to
8 review. Second, an English translation of the letter,
9 parentheses, extraordinary experience, close parenthesis,
10 written in Turkish, made available to us? Signed by the
11 foreperson.

12 Second note, we received 2:35. Can we get an index or
13 directory for the evidence? How can we find a particular piece
14 of evidence? Specifically, the transcript of the interview
15 between Deidre Gordon and Gulay Cibik, again signed by the
16 foreperson.

17 Well, obviously, the answer to the first question is
18 you have, actually, 12 copies of the complete indictment. It
19 may be confusion between the word "indictment" and the word
20 "charge" and since I told them that my charge was incomplete.
21 But beyond that, they have 12 complete indictments.

22 The second question, was, was an English translation
23 of the letter written in Turkish made available to us?

24 MS. ECHENBERG: I believe --

25 THE COURT: I don't know the answer.

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1 MS. ECHENBERG: Yeah, I believe what they are
2 referring to, your Honor, is government exhibit 340-3, which
3 says: Dear Ms. Gulay. But the remainder is in another
4 language. There is no translation of that document.

5 THE COURT: Okay.

6 Okay, then they ask for an index or directory for the
7 evidence.

8 MS. ECHENBERG: And, your Honor, we of course have our
9 own internal index. We're working right now on sanitizing that
10 to possibly go back to the jury. It is 44 pages long, so I
11 assume defense counsel would want to look at it. What I might
12 suggest, is if there is anything in particular we are looking
13 for, we can help them along the way, but we can certainly work
14 on --

15 THE COURT: They also took a lot of notes, so --

16 MR. GERZOG: They also, your Honor say -- although
17 this is not my client, they say specifically the transcript of.
18 So that I think that relates to the question on the bottom.

19 THE COURT: I think it does. Am I right, then?

20 MS. ECHENBERG: Yeah. And in response to that, we
21 have made copies of the relevant pages, which is 2006, starts
22 at line 3. And it goes to 2011, also line 3.

23 So we can -- I'm not sure what your Honor's preference
24 is. This can go back to the jury, nothing is redacted --

25 THE COURT: No, I give them transcripts. I don't read

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1 that.

2 MR. GERZOG: Is that direct and cross?

3 MS. ECHENBERG: This is the direct of that testimony.

4 MR. GERZOG: I think there was cross of that.

5 MR. DONALDSON: Not that I saw. But I'll look at it
6 some more. There was not intentionally significant cross on
7 the statement allegedly given by Ms. Cibik to Ms. Gordon. I
8 don't recall there being cross of that, if at all that I
9 crossed the witness. So we did speak to the government about
10 those pages, and those are the page that I thought were
11 appropriate.

12 All the question was was whether or not you were going
13 to read to it them, or give them the transcript.

14 THE COURT: My practice is to give them the
15 transcript.

16 MR. GERZOG: I wouldn't mind quickly going over it, if
17 I may.

18 THE COURT: I was thinking that it might be just most
19 efficient to just call them back in and respond to these two
20 notes, rather than trying to give them a written response.

21 MS. ECHENBERG: Right. The government has no issue
22 with that, your Honor.

23 MR. DONALDSON: Your Honor, I'm sorry, I was being
24 lectured just now by my client, I didn't hear you.

25 Would you say that again?

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1 THE COURT: I said I just think it might be more
2 efficient, in this instance, to have them come back and let me
3 orally respond to their notes, rather than trying to send them
4 a written response.

5 MR. DONALDSON: Right. And I just want to put on the
6 record, because it's -- I need to put this on the record. I
7 hope I'm not taking up too much of the Court's time.

8 My client is asking me things that I know are not
9 legally appropriate to -- let me just say this. I'm informing
10 my client that it is not appropriate, at this time, for us to
11 start trying to ask the jurors questions, or tell the jurors
12 questions about -- tell the jurors statements about the
13 statement that they claim Ms. Gordon took with my client
14 regarding the truthfulness of it and --

15 THE COURT: Okay.

16 MR. DONALDSON: -- whether her rights were violated
17 regarding Miranda and things like that. We have been through
18 that often, but that appears to be coming up again right now.

19 THE COURT: Ms. Cibik, it's very clear. None of us,
20 not me, not you, none of the lawyers, can have a dialogue with
21 the jury. There is simply no conversation that can occur,
22 beyond if they send us a note and we're able to respond to it,
23 you know, we can. But there is no dialogue. And, if they are
24 in the room, I don't want to hear a word out of your mouth,
25 okay? Do you understand?

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1 DEFENDANT CIBIK: Uh-huh.

2 THE COURT: Yes?

3 DEFENDANT CIBIK: Yes.

4 THE COURT: Okay?

5 MS. ECHENBERG: Did you want me to pass that up, the
6 section of the transcript.

7 THE COURT: Yes, please.

8 (Jury present)

9 THE COURT: Okay sometimes when you send a note, I
10 send you back a note as an answer. I thought this time it
11 might be just more efficient to speak to you.

12 First, you asked for a complete indictment. You have
13 12 complete indictments. What I was trying to explain, and
14 it's probably just my fault, is that the jury instructions are
15 also called the jury charge. And we also refer to charges in
16 the indictment. So maybe that's the source of the confusion.

17 In any event, you have 12 complete indictments.

18 At for the English translation of a letter to
19 Ms. Cibik, there is no English translation in the record. You
20 asked for an index or directory to the evidence. We do not,
21 the Court does not maintain a directory or index with
22 descriptives. It simply is numbers. So, you know, whatever
23 the number in evidence. I don't think that's what you are
24 looking for.

25 The government has a more fulsome directory which they

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1 use for their internal purposes. They are going to make an
2 effort to see if it can be appropriately, I would say the word
3 probably "sanitized," so that it doesn't have anything in it
4 that would be inappropriate, you know, for you to see. But,
5 that's a big project. And it would probably be better, in the
6 interim, if you used one of two sort of methods.

7 One, you all -- a lot of you took notes. And I'm
8 assuming you wrote down numbers. Well, you have all of the
9 actual exhibits. So you could use your notes to guide you to
10 find what you're looking for. That's a possibility.

11 The other things is you can, as you did with respect
12 to the subject of the interview between Agent Gordon and
13 Ms. Cibik, you can ask us for something specific. And we do
14 have -- I'm going to give you the transcript of the testimony
15 of Agent Gordon about that interview. So, I think, you know,
16 that covers everything. I just, you know, want to say that if
17 you have a means, internally, of figuring out -- finding the
18 exhibit that you are looking for, you'll probably get it faster
19 than if you send us a note to get it for you. Because I'll
20 just explain the process. Every note that comes in, the Court
21 officer calls my chambers. We come up. We get it. We make
22 copies of it for every lawyer. And then we all have to
23 reconvene in the courtroom to discuss the appropriate response.
24 The process of that is at least 15 minutes, 20 minutes. We
25 have to get the court reporter. You might have found it

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1 yourself, using the notes, because you have all of the
2 documents. I assume they are in some reasonable numerical
3 order. Yes, they are in numerical order. But, you know, if
4 you need anything, you ask us.

5 Okay? All right? Anything else? Okay.

6 Yes.

7 A JUROR: When you speak about the indictment, is
8 there a difference between the smaller packet that we got and
9 these larger packets that you were reading from?

10 THE COURT: Yeah, they are entirely different.

11 The smaller -- the thing which says "indictment" on it,
12 that is the indictment. Those are the charges that the
13 government brings.

14 The larger document was what I read to you. That's my
15 instructions on the law. When I changed topics, substantive
16 topics, portions of the indictment were copied into my charge.
17 But as I explained, those were only portions. I did not copy
18 the entire indictment. So when you want to find out what
19 charge one says, use the thin version, use the thing that says
20 indictment, don't look in my charge. Just because my charge on
21 that is incomplete, it's not wrong, but it is incomplete. And
22 because it is incomplete in the sense it is wrong, but it is
23 not an inaccurate transcript. It's an accurate copy, but it's
24 incomplete, okay, so use the indictment. If you want to know
25 as you go through the counts, use that. But if you want to

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1 understand the law related to a particular count, then you use
2 the thicker document, the charge, okay. All right, very good.
3 Thank you.

4 (Jury excused)

5 (Adjourned until Tuesday, February 5, 2013 at 10:00
6 a.m.)